

STATE OF HAWAII
CONTRACT FOR GOODS OR SERVICES
BASED UPON
COMPETITIVE SEALED PROPOSALS

This Contract, executed on the respective dates indicated below, is effective as of
July 1, 2007, between Hawaii Employer- Union Health Benefits Trust Fund
(Insert name of state department, agency, board or commission)
State of Hawaii ("STATE"), by its Administrator
(Insert title of person signing for State)
(hereafter also referred to as the HEAD OF THE PURCHASING AGENCY or designee ("HOPA")),
whose address is 201 Merchant Street, Suite 1520, Honolulu, Hawaii 96813
Inc. and National Medical Health Card Systems,
("CONTRACTOR"), a Corporation
(Insert corporation, partnership, joint venture, sole proprietorship, or other legal form of the Contractor)
under the laws of the State of Delaware, whose business address and federal
and state taxpayer identification numbers are as follows: 103 Foulk Rd., Ste 202, Wilmington, DE
19803; Federal ID No. 11-2581812; Hawaii GET ID No. W20016854-01

RECITALS

A. The STATE desires to retain and engage the CONTRACTOR to provide the goods or services, or both, described in this Contract and its attachments, and the CONTRACTOR is agreeable to providing said goods or services or both.

B. The STATE has issued a request for competitive sealed proposals, and has received and reviewed proposals submitted in response to the request.

C. The solicitation for proposals and the selection of the CONTRACTOR were made in accordance with section 103D-303, Hawaii Revised Statutes ("HRS"), Hawaii Administrative Rules, Title 3, Department of Accounting and General Services, Subtitle 11 ("HAR"), Chapter 122, Subchapter 6, and applicable procedures established by the appropriate Chief Procurement Officer ("CPO").

D. The CONTRACTOR has been identified as the responsible and responsive offeror whose proposal is the most advantageous for the STATE, taking into consideration price and the evaluation factors set forth in the request.

E. Pursuant to Section 87A-16, HRS
(Legal authority to enter into this Contract), the STATE is authorized to enter into this Contract.

F. Money is available to fund this Contract pursuant to:

(1) Chapter 87A, HRS including HRS Sections 87A-30 through 87A-36
(Identify state sources)

or (2)

(Identify federal sources)

or both, in the following amounts: State \$ see above and Attachment-S2
Federal \$

NOW, THEREFORE, in consideration of the promises contained in this Contract, the STATE and the CONTRACTOR agree as follows:

1. Scope of Services. The CONTRACTOR shall, in a proper and satisfactory manner as determined by the STATE, provide all the goods or services, or both, set forth in the request for competitive sealed proposals number 07-001 ("RFP") and the CONTRACTOR'S accepted proposal ("Proposal"), both of which, even if not physically attached to this Contract, are made a part of this Contract.

2. Compensation. The CONTRACTOR shall be compensated for goods supplied

or services performed, or both, under this Contract in a total amount not to exceed
see Attachment - S2 _____ DOLLARS

(\$ _____), including approved costs incurred and taxes, at the time and in the manner set forth in the RFP and CONTRACTOR'S Proposal.

3. Time of Performance. The services or goods required of the CONTRACTOR under this Contract shall be performed and completed in accordance with the Time of Performance set forth in Attachment-S3, which is made a part of this Contract.

4. Bonds. The CONTRACTOR ☐ is required to provide or ☒ is not required to provide: ☐ a performance bond, ☐ a payment bond, ☒ a performance and payment bond in the amount of Not Applicable DOLLARS (\$ _____).

5. Standards of Conduct Declaration. The Standards of Conduct Declaration of the CONTRACTOR is attached to and made a part of this Contract.

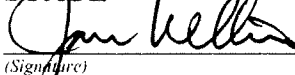
6. Other Terms and Conditions. The General Conditions and any Special Conditions are attached to and made a part of this Contract. In the event of a conflict between the General Conditions and the Special Conditions, the Special Conditions shall control. In the event of a conflict among the documents, the order of precedence shall be as follows: (1) this Contract, including all attachments and addenda; (2) the RFP, including all attachments and addenda; and (3) the Proposal.

7. Liquidated Damages. Liquidated damages shall be assessed in the amount of Five Thousand and no/100 DOLLARS (\$ 5,000.00) per day, in accordance with the terms of paragraph 9 of the General Conditions.

8. Notices. Any written notice required to be given by a party to this Contract shall be (a) delivered personally, or (b) sent by United States first class mail, postage prepaid. Notice to the STATE shall be sent to the HOPA'S address indicated in the Contract. Notice to the CONTRACTOR shall be sent to the CONTRACTOR'S address indicated in the Contract. A notice shall be deemed to have been received three (3) days after mailing or at the time of actual receipt, whichever is earlier. The CONTRACTOR is responsible for notifying the STATE in writing of any change of address.

IN VIEW OF THE ABOVE, the parties execute this Contract by their signatures, on the dates below, to be effective as of the date first above written.

STATE



(Signature)

James Williams

(Print Name)

Administrator

(Print Title)

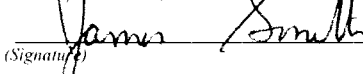
MAR 28 2007

(Date)

CONTRACTOR

National Medical Health Card Systems, Inc.

(Name of Contractor)



(Signature)

James Smith

(Print Name)

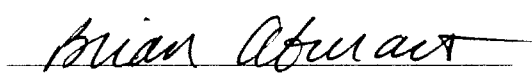
President and Chief Executive Officer

(Print Title)

MAR 26 2007

(Date)

APPROVED AS TO FORM:



Deputy Attorney General

* Evidence of authority of the CONTRACTOR'S representative to sign this Contract for the CONTRACTOR must be attached.



26 Harbor Park Drive
Port Washington, NY 11050

tel: 800.251.3883
fax: 516.605.6985
www.nmhc.com

Total Healthcare Solutions

Via Email

March 30, 2007

DEPARTMENT OF THE ATTORNEY GENERAL
Administrative Division
425 Queen Street
Honolulu, Hawaii 96813

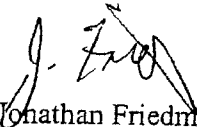
ATT: BRIAN ABURANO, ESQ.

Dear Mr. Aburano:

I am the Chief Legal Officer and Corporate Secretary for National Medical Health Card Systems, Inc. ("NMHC") or the ("Company"). Pursuant to the Company's Articles of Incorporation and By-Laws, the Chief Executive Officer, presently James Smith, has the authority to execute binding contracts on behalf of the Company without the signature of any of its other officers.

In this regard, Mr. Smith regularly executes contracts similar to the contract between NMHC and the Hawaii Employer-Union Health Benefits Trust Fund, effective July 1, 2007. Therefore, the contract between NMHC and the Hawaii Employer-Union Health Benefits Trust Fund, as executed by Mr. Smith, is a valid and binding obligation of the Company

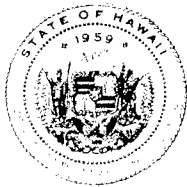
Sincerely,


Jonathan Friedman, Esq.
Chief Legal Officer
Corporate Secretary

JF/er

writer's direct dial 516-605-6758 fax 516-605-6989 e-mail address jfriedman@nmhc.com

NATIONAL MEDICAL HEALTH CARD SYSTEMS, INC. | NASDAQ: NMHC



STATE OF HAWAII

CONTRACTOR'S

STANDARDS OF CONDUCT DECLARATION

For the purposes of this declaration:

"Agency" means and includes the State, the legislature and its committees, all executive departments, boards, commissions, committees, bureaus, offices; and all independent commissions and other establishments of the state government but excluding the courts.

"Controlling interest" means an interest in a business or other undertaking which is sufficient in fact to control, whether the interest is greater or less than fifty per cent (50%).

"Employee" means any nominated, appointed, or elected officer or employee of the State, including members of boards, commissions, and committees, and employees under contract to the State or of the constitutional convention, but excluding legislators, delegates to the constitutional convention, justices, and judges. (Section 84-3, HRS).

On behalf of National Medical Health Card Systems, Inc., CONTRACTOR, the undersigned does declare as follows:

1. CONTRACTOR ☐ is ☒ is not a legislator or an employee or a business in which a legislator or an employee has a controlling interest. (Section 84-15(a), HRS).
2. CONTRACTOR has not been represented or assisted personally in the matter by an individual who has been an employee of the agency awarding this Contract within the preceding two years and who participated while so employed in the matter with which the Contract is directly concerned. (Section 84-15(b), HRS).
3. CONTRACTOR has not been assisted or represented by a legislator or employee for a fee or other compensation to obtain this Contract and will not be assisted or represented by a legislator or employee for a fee or other compensation in the performance of this Contract, if the legislator or employee had been involved in the development or award of the Contract. (Section 84-14 (d), HRS).
4. CONTRACTOR has not been represented on matters related to this Contract, for a fee or other consideration by an individual who, within the past twelve (12) months, has been an agency employee, or in the case of the Legislature, a legislator, and participated while an employee or legislator on matters related to this Contract. (Sections 84-18(b) and (c), HRS).

CONTRACTOR understands that the Contract to which this document is attached is voidable on behalf of the STATE if this Contract was entered into in violation of any provision of chapter 84, Hawaii Revised Statutes, commonly referred to as the Code of Ethics, including the provisions which are the source of the declarations above. Additionally, any fee, compensation, gift, or profit received by any person as a result of a violation of the Code of Ethics may be recovered by the STATE.

CONTRACTOR

By

(Signature)

Print Name

James Smith

Print Title

President and CEO

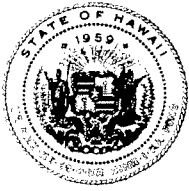
Name of Contractor

National Medical Health Card
Systems, Inc.

Date

MAR 26 2007

* Reminder to Agency: If the "is" block is checked and if the Contract involves goods or services of a value in excess of \$10,000, the Contract must be awarded by competitive sealed bidding under section 103D-302, HRS, or a competitive sealed proposal under section 103D-303, HRS. Otherwise, the Agency may not award the Contract unless it posts a notice of its intent to award it and files a copy of the notice with the State Ethics Commission. (Section 84-15(a), HRS).



STATE OF HAWAII

SCOPE OF SERVICES

Under Chapter 87A, Hawaii Revised Statutes, the STATE has decided to provide self-funded prescription drug benefits plans administered by Contractor. Contractor's scope of work and services shall be defined by: (a) Request For Proposals No. 07-001, issued by the STATE in August 2006, including all addenda thereto (collectively "RFP No. 07-001"); (b) Contractor's proposal in response to RFP No. 07-001 including any additions or modifications thereto (collectively, "Contractor's proposal"); and (c) the provisions of this Contract.

RFP No. 07-001 and Contractor's proposal are incorporated into this Contract by reference. For convenience, any additions or modifications to Contractor's proposal are attached hereto.

If there are any conflicts or inconsistencies between the scope of work or services required by this Contract, RFP No. 07-001, and Contractor's proposal: (i) the express terms of the Contract shall govern over RFP No. 07-001 and Contractor's proposal; and (ii) the terms of RFP No. 07-001 shall govern over Contractor's proposal.

NMHC Best and Final Offer

November 8, 2006

Retail Network¹

Brands: "Lower of" U&C or,
AWP -16.2% + \$1.64

Generics: "Lower of" U&C or,
MACed Items: MAC + \$1.72

Non-MACed Items: AWP -23.7% + \$1.72

Mail Service

Brands: AWP -24% + \$0.00

Generics: AWP -55% + \$0.00

Rebates^{1 2 3}

100% of all applicable "gross" formulary \$'s (i.e., Net-Net deal)

Preferred (3-Tier Managed) Formulary

Retail: ESTIMATED \$7.55 per All BRAND Rx's

Mail Svc.: ESTIMATED \$15.70 per All BRAND Rx'

Administrative Fees

Base Fees: \$0.50 per "paid" Rx (Retail, Specialty, and Mail Service)

Paper Claim: \$1.50 per Rx

¹ Assumes a "maintenance at retail" penetration rate of twenty-five percent (25%) and a forty-one and three tenths of a percent (41.3%) retiree population distribution.

² Requires a qualified three tier plan design with a minimum differential of \$15 between preferred and non preferred brands and the client's one hundred percent (100%) compliance with NMHC's Preferred Drug Formulary.

³ The above estimated rebate minimums are respectively based upon an average thirty (30) and ninety (90) day supply prescription and NMHC's historical 1st Quarter 2006 book-of-business experience. Due to the absence of detailed historical utilization information, should the actual program performance materially differ from the underlying assumptions used to develop this financial proposal or industry changes occur beyond our control, NMHC reserves the right to revisit and proportionately adjust its estimate.



6148 West 115th Avenue
Broomfield, CO 80020

tel: 303.404.9880
fax: 303.404.9881
www.nmhc.com

Total Healthcare Solutions

November 22, 2006

John Garner
Chief Executive Officer
Garner Consulting
35 N. Lake Avenue, Suite 720
Pasadena, CA 91101

Re: Hawaii Employer-Union Health Benefits Trust Fund (EUTF) PBM Proposal
Follow Up

Dear John:

On behalf of all of us at NMHC, thank you for the opportunity to address the additional questions that you had regarding our proposal for the EUTF pharmacy benefit program. Per our discussion, below are NMHC's responses to the follow up questions regarding contract language, call center, formulary, Longs Drugs pharmacies and other program components.

Q1: Does NMHC agree to sign and execute the contract that was provided as part of the RFP documents? Does NMHC propose any revisions or additions to the contract?

Yes, NMHC agrees to sign and execute the contract that was provided in the original proposal documents. If awarded the business, NMHC would work with the EUTF and Garner Consulting to develop a contract that supports a self-funded arrangement that is mutually agreed upon. Please note, that we should anticipate the development of a service agreement addendum to the contract which would specifically outline PBM-specific services, fees and guarantees.

Q2: EUTF would prefer to have a customer service representative based and located in Honolulu to receive member calls to assist EUTF members with issues such as locating the nearest pharmacy, etc. Would NMHC agree to this request?

Yes, NMHC agrees to this request. In fact, while it was not specifically contained in our proposal responses, NMHC had already discussed internally the necessity

of hiring, not one (1) but two (2) full-time customer care representatives in Hawaii to support EUTF's program and membership. We had anticipated and do appreciate EUTF's desire to have local customer call representatives that understand the demographics of EUTF's membership and the Hawaiian culture. Providing full and comprehensive member support is in line with NMHC's client-centric philosophy of aligning our products and services to meet the needs of NMHC's clients and their members.

If awarded the business, NMHC will hire two (2) full-time employees that will provide EUTF's members with dedicated member service. Member calls received after hours will be seamlessly routed to our Customer Care Center located in Sacramento, CA. Interestingly enough, the Sacramento Customer Care Center currently retains two (2) representatives that are of Hawaiian decent which may provide additional support to EUTF's members during off hours. It is important to note that the provision of two (2) Hawaii-based customer care representatives does not change the terms of the financial arrangement outlined in our proposal. Should EUTF request these representatives to be located onsite at EUTF's facilities, we can accommodate that request as well.

We have successful experience in supporting a similar type of requirement with a current state-based employer program on the mainland.

Q3: What flexibility does NMHC allow for customization of EUTF's formulary?

Our clinical philosophy in regard to formulary development is one of providing our clients with the lowest net-net cost. In order to achieve the highest opportunity for cost saving for EUTF's pharmacy benefit program, NMHC recommends that EUTF adopt our formulary.

If that is not an option for EUTF, we would explore setting up prior authorization (PA) criteria and other clinical protocols. Lastly, we would also explore customizing a formulary specifically for EUTF. Both these options would be on a drug-by-drug basis.

NMHC will provide a clinical account manager that will work with EUTF to explore various formulary and plan design options to support EUTF's cost-savings initiatives while balancing concerns such as utilization and member disruption.

Q4: Is Longs Drugs included in NMHC's pharmacy network in Hawaii?

Yes. All Longs Drugs pharmacy locations in Hawaii are included in NMHC's pharmacy network.

Q5: Can NMHC administer a coinsurance copay program?

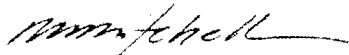
Yes. We administer this type of program for many of our clients today. If awarded the business, during the implementation process, NMHC would propose providing EUTF with a comprehensive plan review and analysis to determine what parameters and limits EUTF may wish to consider for this type of program.

Q6: Are there any additional ongoing contract disruptions that were not mentioned in NMHC's proposal?

No, NMHC does not have any additional litigation other than the two that we listed in the proposal (e.g., Midwest and Benicorp). The Midwest case was settled in 2005.

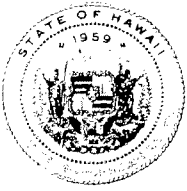
John, thank you again for giving us the opportunity to provide EUTF with these clarification responses. Please feel free to contact me directly if there are additional questions regarding NMHC's proposal, service or capabilities. I can be reached at (303) 404-9880 or mmitchell@nmhc.com.

Regards,



Mary Mitchell
Vice President, Strategic Business Relationships

Enclosure

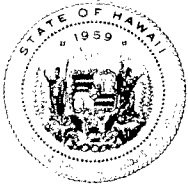


STATE OF HAWAII

COMPENSATION AND PAYMENT SCHEDULE

For all goods and services due under this Contract, Contractor shall be paid as follows:

1. Contractor's compensation for the first and second years of the Contract shall be the fees for the plans administered by Contractor set forth in Exhibit A to the Addendum attached to this Contract and incorporated herein by reference (the "Addendum"). It is understood and agreed that the foregoing compensation includes all of Contractor's compensation, fees, costs, expenses, and taxes as provided in Section 2.08 of RFP No. 07-001.
2. Contractor shall be paid as provided in the Addendum. Payments to Contractor shall be governed by Section 103-10, Hawaii Revised Statutes.
3. Except as expressly provided in the Special Conditions of the Contract, any change to Contractor's compensation under the Contract must be mutually agreed upon in advance and documented by a supplement to this Contract signed by both STATE and Contractor.
4. Except as expressly provided in the Special Conditions of the Contract, all terms and conditions pertaining to the payment of compensation to Contractor shall be as provided in RFP No. 07-001 and the General Conditions.

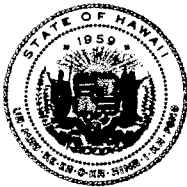


STATE OF HAWAII

TIME OF PERFORMANCE

The term of the Contract shall be two (2) years, commencing on July 1, 2007 and expiring at midnight on June 30, 2009.

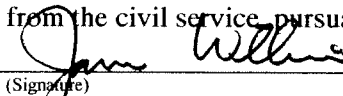
The STATE shall have two options to extend the Contract. First, the STATE shall have the option to extend the Contract for either: (a) one year, commencing on July 1, 2009 and expiring at midnight on June 30, 2010; or (b) two years, commencing on July 1, 2009 and expiring at midnight on June 30, 2011. Second, if the STATE has exercised the option to extend the Contract for one year, the STATE shall have a second option to extend the Contract for one additional year, commencing on July 1, 2010 and expiring at midnight on June 30, 2011. It is understood and agreed that the STATE has sole and complete discretion as to whether to exercise either of the foregoing options. If the STATE does not exercise the applicable option, the Contract will expire at the end of the then current term.



STATE OF HAWAII

**CERTIFICATE OF EXEMPTION
FROM CIVIL SERVICE****1. By Heads of Departments Delegated by the Director of the Department of Human Resources Development (“DHRD”).***

Pursuant to a delegation of the authority by the Director of DHRD, I certify that the services to be provided under this Contract, and the person(s) providing the services under this Contract are exempt from the civil service, pursuant to § 76-16, Hawaii Revised Statutes (HRS).


(Signature)

James Williams

(Print Name)

Administrator

(Print Title)

(Date)

3/28/07

* This part of the form may be used by all department heads and the heads of attached agencies to whom the Director of DHRD expressly has delegated authority to certify § 76-16, HRS, civil service exemptions. The specific paragraph(s) of § 76-16, HRS, upon which an exemption is based should be noted in the contract file. If an exemption is based on § 76-16(b)(15), the contract must meet the following conditions:

- (1) It involves the delivery of completed work or product by or during a specific time;
- (2) There is no employee-employer relationship; and
- (3) The authorized funding for the service is from other than the "A" or personal services cost element.

NOTE: Not all attached agencies have received a delegation under § 76-16(b)(15). If in doubt, attached agencies should check with the Director of DHRD prior to certifying an exemption under § 76-16(b)(15). Authority to certify exemptions under §§ 76-16(b)(2), and 76-16(b)(12), HRS, has not been delegated; only the Director of DHRD may certify §§ 76-16(b)(2), and 76-16(b)(12) exemptions.

2. By the Director of DHRD, State of Hawaii.

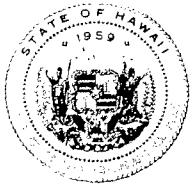
I certify that the services to be provided under this Contract, and the person(s) providing the services under this Contract are exempt from the civil service, pursuant to § 76-16, HRS.

(Signature)

(Date)

(Print Name)

(Print Title, if designee of the Director of DHRD)



STATE OF HAWAII

SPECIAL CONDITIONS

If there is any conflict or inconsistency between the terms of these Special Conditions and the terms of RFP No. 07-001, Contractor's proposal or the General Conditions, the terms of these Special Conditions shall govern.

1. Scope of Services

A. In addition to the goods and services set forth in Attachment S1 of this Contract, Contractor shall provide the goods and services set forth in the Addendum.

B. Unless required by applicable federal or state law, Contractor shall not change the goods and services provided under this Contract without the advance written approval of the board of trustees of the Hawaii Employer-Union Health Benefits Trust Fund ("EUTF"). In requesting such approval, Contractor shall provide all information and documents reasonably requested by the EUTF board of trustees, administrator, or benefits consultant regarding the proposed change.

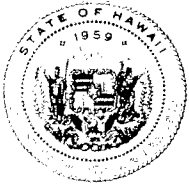
C. Contractor shall change the goods and services provided under this Contract if required by applicable federal or state law, including, but not limited to, changes in statutes or regulations, court rulings, and administrative decisions. Notwithstanding the foregoing, Contractor shall not be required to change the goods and services provided under the Contract based on: (1) any statute or regulation that the EUTF is seeking an interpretation of or exemption from; (2) any court ruling or administrative decision that is being appealed by the EUTF; or (3) any advice from legal counsel for the EUTF that a change in goods and services is not required. Contractor shall provide written notice to the EUTF administrator as soon as reasonably possible after Contractor has been notified or has determined that a change in the goods and services provided under this Contract is required by federal or state law, and shall provide all information and documents reasonably requested by the EUTF board of trustees, administrator, or benefits consultant regarding the required change.

D. Any and all changes in Contractor's compensation due to a change in the goods and services under the Contract shall be handled under Section 2 of these Special Conditions.

2. Payment and Compensation.

A. If Contractor is required to change goods and services provided under this Contract due to applicable federal or state law, Contractor shall notify the STATE as soon as reasonably possible if such changes would change the compensation Contractor charges under the Contract and the amount of any proposed change in Contractor's compensation. Contractor shall provide the STATE with all information and documents requested by STATE relating to Contractor's proposed change in compensation.

B. If any request or action of the EUTF board of trustees or administrator would or may lead to a change in Contractor's compensation under this Contract, Contractor shall promptly notify the STATE in writing of this possible change and the amount of the possible change. Contractor shall provide the STATE with all information and documents requested by STATE relating to the possible change in Contractor's compensation.



STATE OF HAWAII

SPECIAL CONDITIONS

3. General Terms and Conditions

A. To the extent that the terms of the General Conditions are inconsistent with the express terms of RFP No. 07-001, the express terms of RFP No. 07-001 shall govern.

B. The following paragraphs or subparagraphs of the General Conditions shall not apply to this Contract:

- (1) Paragraph 16;
- (2) Paragraph 22;
- (3) Paragraph 23; and
- (4) Paragraph 40.

C. The following paragraphs or subparagraphs of the General Conditions are modified but only to the extent expressly provided below:

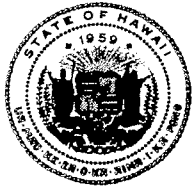
- (1) Paragraph 13.a. of the General Conditions is modified so that the Agency procurement officer may terminate the Contract or Contractor's right to proceed with the Contract (or any part thereof) if the Contractor fails to cure a default or breach of the Contract (as described therein) within thirty (30) days.
- (2) Paragraph 14.a. of the General Conditions is modified to require the Agency procurement officer to provide Contractor with written notice at least ninety (90) days prior to any termination for convenience of the Contract.

4. Supplemental Terms and Conditions

A. Attached hereto is an Addendum between STATE and Contractor. If the terms and conditions of the attached Addendum conflict with the terms and conditions of the Contract (which includes the terms of RFP No. 07-001, Contractor's proposal, and the General Terms and Conditions), the terms and conditions of the Contract shall govern.

B. Any notice which is required to be sent by either party to the Contract shall be: (1) hand delivered or deposited in the United States mails, first class postage prepaid, addressed to the address of the party shown on the first page of the Contract, or at such other address as either party shall notify the other in writing; or (2) faxed or e-mailed to the party at such number or e-mail address as either party shall provide to the other in writing. Notices shall be deemed to be delivered upon receipt if hand delivered, three days after being deposited in the United States mails if properly mailed, and upon receipt if properly faxed or e-mailed.

C. This Contract is solely between STATE and Contractor and no other person, firm, company, nor other entity is intended as a third-party beneficiary of the Contract nor shall they have third-party beneficiary status under or with respect to the Contract.



STATE OF HAWAII
SPECIAL CONDITIONS

D. Contractor shall provide and maintain a provider network that is substantially the same as appears in Contractor's proposal in terms of the number of pharmacies, the types of services covered, and geographic coverage.

] **NATIONAL MEDICAL HEALTH CARD SYSTEMS, INC.**
PHARMACY BENEFITS MANAGEMENT SERVICES ADDENDUM

THIS PHARMACY BENEFITS MANAGEMENT SERVICES ADDENDUM entered into by and between NATIONAL MEDICAL HEALTH CARD SYSTEMS, INC. d/b/a NMHCRx, with a principal office at 26 Harbor Park Drive, Port Washington, NY 11050 (hereinafter referred to as the "Manager" or "NMHC") and HAWAII EMPLOYER-UNION HEALTH BENEFITS TRUST FUND, STATE OF HAWAII with a principal office at 201 Merchant Street, Suite 1520, Honolulu, HI 96813 (hereinafter referred to as the "Client") is effective July 1, 2007, (the "Effective Date"). This Agreement is the addendum to the Contract dated July 1, 2007 between the Client and NMHC (the "Contract").

RECITALS:

WHEREAS, the Client desires to provide a prescription drug plan (hereinafter referred to as the "Plan") to Participants (as hereinafter defined);

WHEREAS, the Manager has developed a system for paying claims and furnishing other related services through a network of pharmacies and mail service facilities based upon a specific plan design (hereinafter referred to as the "System") for the purpose of managing the Plan; and

WHEREAS, the Client desires to engage the Manager for purposes of managing the Plan on behalf of the Client through the use of the System, and the Manager desires to provide such services to the Client.

NOW, THEREFORE, in consideration of the mutual promises hereinafter contained, the parties agree as follows:

SECTION 1. DEFINITIONS. For purposes of this Agreement, the following terms shall be defined as follows:

"AWP" means the effective "average wholesale price" for a standard package size of a prescription drug as determined by the Manager and established in connection with First Data Bank Blue Book (with supplements), or the Medi-Span Master Drug Pricing Source (with supplements), or other industry comparable sources and the Manager, and is the "list price" as reported by drug wholesalers.

"DUR" means the concurrent and/or retrospective drug utilization review programs used by the Manager.

"Formulary List" means a list of preferred prescription drugs developed and managed by the Manager and/or third parties, which (i) has been approved and /or recommended on the basis of a clinical review by the Manager's Pharmacy and Therapeutics Committee, and (ii) reflects the Manager's recommendations as to

which preferred prescription drugs should be given favorable consideration by pharmacies and plans and their members.

"Generic Drugs" mean a prescription drug, whether identified by its chemical, proprietary, or non-proprietary name that is therapeutically equivalent and interchangeable with drugs having an identical amount of the same active ingredient. The designation of a product as "brand" or "generic" (i) for purposes of reporting, claims processing and benefit administration, is determined by the Medi-Span Master Drug Pricing Source or other industry comparable database and (ii) for purposes of pricing guarantees outlined in Exhibit A, is determined by the Medi-Span Master Drug Pricing Source or other industry comparable database, and subject to the following standard policies of the Manager: (w) that over-the-counter drugs will be treated as brand-name drugs, and (x) generic drugs that have either recently come off patent and do not generate discounts traditionally delivered by generic drugs, or have an exclusive pharmaceutical manufacturer will be treated as brand-name drugs.

"MAC" or "Maximum Allowable Cost" means the unit price that has been established by the Manager for a qualifying generic drug on the Manager's MAC list, which may be amended from time to time.

"Participant" means an employee as defined in Section 87A-1 of the Hawaii Revised Statutes, or a dependent of such employee, who has met the criteria required to become a participant in the Plan.

"Participant Identification Card" means an identification card issued to each Participant in the Plan.

"Member Pharmacy" means a pharmacy that has entered into a Member Pharmacy Agreement with the Manager and is a participating pharmacy under the Plan.

"Member Pharmacy Agreement" means the agreement entered into between the Manager and the Member Pharmacy.

"Non-Member Pharmacy" means a pharmacy that does not participate in the Plan.

"Out-of-Network Claim Form" means a claim form that is approved by the Manager and the Client and is utilized when filling a prescription at a Non-Member Pharmacy.

"Semi-Monthly Account Statement" means a statement provided by the Manager to the Client on the 15th and the last day of the month, which details various claim and billing information in

addition to Administrative Fees (as defined herein) incurred for a specific period.

SECTION 2. PLAN TO BE MANAGED.

2.1 Plan Design. (a) The Client and the Manager shall cooperate to achieve implementation in accordance with an agreed upon timetable. Within a reasonable time prior to the implementation of the Plan and in no event later than sixty (60) days prior to the date when the Manager first provides services to Participants, the Client shall furnish the Manager with the details of the Plan. This information must be complete and accurate and in a format and media approved by the Manager. The Manager and the Member Pharmacies are entitled to rely on the accuracy and completeness of this information. This information shall include the following (collectively, the “Plan Design”):

- (i) the proposed implementation date of the Plan;
- (ii) enrollee file data required to administer the Plan including but not limited to the classes of dependents covered, including any age limits applicable to dependent children;
- (iii) estimated number of Participants, listed by location;
- (iii) basis by which payments are determined when prescriptions are furnished by both Member and Non-Member Pharmacies;
- (iv) expiration date of the Plan, if applicable;
- (v) the amount of deductible and co-payments, if any;
- (vi) manner of distribution of NMHC cards, if any, to Participants;
- (vii) a list of names of all persons to be covered under the Plan (the “Enrollment Roster”);
- (viii) a description of drugs that are included and excluded from the Plan; and
- (ix) prescriber file data, if any, required to administer the Plan; and
- (x) other information relevant to the benefit Plan Design as the Manager may reasonably request for the effectual operation of the System.

Notwithstanding the foregoing, it is understood that the Enrollment Roster from Client’s 2007 open enrollment will not be provided sixty (60) days prior to the date when Manager first provides services to Participants, but will be provided as soon as practicable.

- (b) Based on the Plan Design and other information provided by the Client, the Manager shall create and maintain computerized files containing the current Plan Design.

(c) The Client shall provide eligibility updates to the Manager on a periodic basis as the Client deems necessary. Beginning 24 hours after an eligibility update has been received by the Manager, the Client shall not be liable to the Manager for ineligible persons. The Manager shall not be liable for any prescriptions filled or processed for any ineligible persons due to incorrect eligibility data provided to the Manager.

2.2 Benefit Design Changes. (a) The Client shall notify the Manager in writing at least ninety (90) days in advance of any changes in the Plan, that results in a change of any of the services provided by the Manager under the terms of this Agreement. If the change or update necessitates operating system software modification, the Manager shall advise the Client of the estimated time and additional cost (if any) to the Client required to make such software modifications, and the parties shall agree upon the implementation date of such change. The Client shall be solely responsible for ensuring that any such change or update complies with the terms of the Plan and any contracts between the Client and its Participants. If such changes have a material impact on the Manager’s obligations under this Agreement, then the Client agrees to negotiate in good faith appropriate relief for the Manager. Prior to the implementation of any changes in the Plan by Manager, Manager shall provide: (i) a description of all costs or changes in fees that the Manager proposes to charge Client with respect to implementing the Plan changes; and (ii) the supporting documentation and all information that Client requests to evaluate the impact of Plan changes on the Manager and/or Manager’s proposed costs or changes in fees.

(b) The Client is solely responsible for any liability arising in connection with the Client’s Plan Design. The Manager makes no representation or warranty that the Plan Design selected by the Client is in compliance with any law that applies to the Client, and the Manager has no responsibility to advise the Client about Client’s compliance with any applicable law.

2.3 Non-Member Pharmacy Reimbursement. (a) If the Plan provides for reimbursement to a Participant of some or all of the cost of prescription drugs purchased at Non-Member Pharmacies, then the Plan shall provide for such reimbursement only upon the submission of an Out-Of-Network Claim Form. The level of reimbursement provided pursuant to this Section 2.3 shall be based upon the same schedule in effect for Member Pharmacies.

(b) The Plan shall provide that if the Plan reimburses a Participant for the cost of prescription drugs purchased at Non Member Pharmacies, such benefits payable under the Plan are not assignable to a third party and any assignment or attempted assignment thereof shall be null and void.

SECTION 3. SERVICES.

3.1 The Manager shall manage the Client’s prescription benefit plan, including the provision of the following products and services in accordance with the Plan (the “Services”):

(a) Retail Pharmacy. (i) provide access to Member Pharmacies that are available during regular business hours to dispense medication to Participants in agreed upon geographic areas;

(ii) process prescription drug claims and make reimbursement payments to pharmacies;

(iii) require Member Pharmacies to comply with the terms of the Manager's Member Pharmacy Agreement;

(iv) provide information to Member Pharmacies concerning drug interaction, safety edits, and information of generic substitution and therapeutic intervention programs;

(v) require Member Pharmacies to collect all applicable co-payments or other costs from Participants; and

(vi) maintain and conduct a Member Pharmacy audit program with the goal of determining Member Pharmacy's adherence to regulatory and contractual requirements in accordance with Section 4.6.

(b) Claims Processing and Adjudication. Through its on-line claims adjudication system, the Manager shall

(i) process electronic or manual claims submitted by pharmacies;

(ii) process Out-of-Network Claim Forms submitted by Participants;

(iii) determine whether the claim qualifies for reimbursement in accordance with the terms of the applicable Plan and the eligibility information;

(iv) calculate the payment of such claims pursuant to the applicable Plan;

(v) perform electronic edits to validate pharmacy submitted cost and reimbursement monies based upon Member Pharmacy contracted price;

(vi) monitor claims submission compliance with Formulary List and other drug utilization review programs;

(vii) make any appropriate reimbursements to Participants; and

(viii) notify the submitting Member Pharmacy or Participant of non-reimbursable claims.

(c) Customer Service. Provide customer service as required by the Client's request for proposals, and operate a toll-free customer service line accessible throughout the United States.

(d) Reporting. (i) Semi-Monthly Account Statement. Furnish the Client with a Semi-Monthly Account Statement which sets forth a summary of cost of claims to the Plan during the

preceding period. Such summary shall indicate the total number of claims and the cost to the Plan and shall include such other data and be in such form as agreed upon by the parties, provided that such form is compatible with the System.

(ii) Non-Standard Reports. At the Client's expense, the Manager may prepare and provide non-standard management and utilization reports, and ad hoc reports within an agreed-upon-time and format.

(e) Formulary Program. The Manager shall develop and maintain a Formulary List. As part of the Plan design, the Client hereby adopts the Manager's recommended Formulary List, as amended from time to time. Notwithstanding the foregoing, until the Client notifies the Manager to the contrary, the Manager shall charge the formulary co-pay for prescription drugs that are not on the Formulary List to Participants who were being charged the formulary co-pay for such drugs under the prior prescription drug plans sponsored by Client. The Manager may contact prescribers, as appropriate, to obtain approval for substitution of formulary drugs and contact Participants regarding therapeutic compliance, therapeutic education or similar programs. The Manager may receive compensation from pharmaceutical manufacturers for these services.

(f) Utilization Management/Clinical Programs. The Manager shall provide utilization management and optional clinical programs as per its proposal to Client.

(g) Communication Materials. The Manager shall produce and provide (i) standard implementation kits, including claim forms and other educational materials, for distribution to current Participants; (ii) Formulary List on a periodic basis to prescribers; (iii) computer generated listing of Member-Pharmacies on a reasonably required basis by the Client; and (iv) computer generated listing of Participants on a reasonably required basis by the Client.

(h) Participant Identification Cards. The Manager shall provide Participant Identification Cards in NCPDP format with the Client's name in black and white for a \$0.40 per card fee. An additional service fee shall be charged for Participant Identification Cards not in NCPDP format.

(i) Mail Service Pharmacy. The Manager shall (i) receive prescriptions from Participants via the U.S. mail or commercial carrier at an address specified by the Manager from time to time, subject to and in accordance with the Plan.

(ii) fill prescriptions during normal business hours, subject to the professional judgment of the dispensing pharmacist;

(iii) provide Participants toll-free telephone access to a pharmacist and customer service representative;

(iv) provide to the Client promotional materials that explain to Participants how to use the mail service program, as well as any other materials Participants may require to begin using the

mail program and the Client shall distribute such information to Participants;

(v) provide utilization management services, including, but not limited to, computerized drug interaction monitoring of Participants based upon the Participant profile, programs for generic substitution and therapeutic intervention, pharmaceutical cost containment services and safety edits, and subject to prescriber approval, clinical appropriateness, the terms of the Plan and applicable law;

(vi) ship all prescription orders to Participants via U.S. Postal Service or other appropriate carrier to the address provided by the Client and/or the Participant, as long as such addresses are located in the United States; and

(vii) provide the Client with a list of certain drugs that will not be subject to the mail service pricing rate. AWP for the purposes of mail services being delivered under this Agreement shall mean the "average wholesale price" for the applicable package size of a prescription drug based upon the most current pricing information from Medi-Span Master Drug Pricing Source (with supplements). To prevent the disruption of services to Participants, the Manager's mail service pharmacy may dispense drugs even if the prescription is not accompanied by the correct copay, deductible, or coinsurance amount as applicable and the Client shall be liable to the Manager for such amounts if reasonable collection efforts by the Manager fail. A minimum price of \$7.99 shall be applied for all mail service drugs.

(j) I/O Analytics. If elected by the Client, provide data analytics and interpretations of findings aimed at identifying opportunities to improve quality and reduce costs.

3.2 Unless otherwise directed by the Client, the Manager shall follow its regular grievance and appeals procedure for the Participants. If directed by the Client, the Manager shall follow any grievance and appeals procedures established by the Plan for its Participants. In all cases, the Plan shall remain the final arbiters of grievances and appeals from Participants.

SECTION 4. ADDITIONAL AGREEMENTS AND ACKNOWLEDGMENTS.

4.1 Pharmacist Discretion. (a) The Manager, on behalf of the Client, shall advise Member Pharmacies that the information generated in connection with the DUR system is intended as an information guide and shall not be relied upon by the Member Pharmacies as a substitute for the professional judgment, knowledge, expertise, or skill of any physicians, pharmacists or health care providers.

(b) The Client acknowledges and agrees that the DUR system will provide information to the Member Pharmacies and providers and that the Member Pharmacies or providers, may or may not, in their sole discretion, dispense prescriptions or provide other goods and services that correlate with the information they receive through the DUR system. Accordingly, the Manager

assumes no liability to the Client or any other person in connection with the DUR process, including, without limitation, the failure of the DUR process to identify a prescription that results in injury to a Participant.

4.2 Patient Information Limitations. The Client acknowledges that the DUR system (i) is a highly automated system, without individual review in most circumstances, and (ii) is necessarily limited by the amount, accuracy and completeness of data concerning Participants inputted into the System or obtained from prescription claims and from information provided by the Client. The Manager shall have no obligation to acquire information regarding any Participant beyond the information that is included in the Manager's eligibility database or the submitted claim. Providers are individually responsible for acting or not acting upon information generated and transmitted through the DUR services, and for performing services in each jurisdiction consistent with the scope of their licenses. In performing DUR services, the Manager will not, and is not required by this Agreement to deny claims or require physician, pharmacist, or patient compliance with any norm or suggested drug regimen, or in any way substitute the Manager's judgment for the professional judgment or responsibility of the physician or pharmacist. The absence of a warning for a given drug or drug combination shall not be construed to indicate that the drug or drug combination is safe, appropriate, or effective for any Participant.

4.3 Database Limitations. (a) The Client acknowledges the following:

(i) the DUR system is a collection of databases of clinical drug data and drug dispensing information developed and maintained in part by the Manager and in part by independent drug database companies;

(ii) the Manager has and may continue to consult with outside software and other vendors, as well as consulting health care professionals and any recognized compendia, to provide databases and other information as the Manager deems necessary or helpful to include in the DUR system;

(iii) the DUR system may not contain all currently available information on accepted medical practice or prescribing practices; and

(b) The Manager shall update the DUR database or any other databases and reports upon which the Manager's Services are based upon.

(c) The Manager shall update the DUR system on a reasonable basis to reflect changes in standards for pharmaceutical prescribing.

4.4 Prior Authorization. (a) The Manager will provide the Client with its standard Prior Authorization Program, if requested. In determining whether to authorize dispensing of a drug under the Prior Authorization Program, the Manager may rely entirely upon information about the Participant and the

diagnosis of the Participant's condition provided to it from sources deemed reliable to the Manager at the time that the prescription is to be dispensed, and upon the Plan's adopted prior authorization protocols. The Client acknowledges that prior authorization programs are nondiscretionary processing techniques intended to provide better management of the prescription drug program based on objective criteria and the limited amount of patient information available to the Manager and shall be used to determine the overall performance of the Plan, including, but not limited to, the effective delivered discount. The Manager shall not undertake, and is not required hereunder, to determine medical necessity, appropriateness of therapies, to make diagnoses or substitute the Manager's judgment for the professional judgment and responsibility of the prescriber.

(b) At the Client's request, the Manager will supply to the Client a list of suggested prior authorization criteria for review, modification, and/or adoption by the Client. The Client will have final approval over the criteria to be utilized that will be evidenced in writing by the Client. The Manager will administer the criteria as approved by the Client. No changes will be made to the criteria except pursuant to the Client's written request. From time to time, new information on a specific drug therapy may become available. This new information may make it necessary or desirable to modify existing prior authorization criteria. The Manager will notify the Client of proposed changes to the criteria. If the Client does not wish to accept the proposed changes to the Prior Authorization criteria, the Client agrees to notify the Manager in writing within thirty days and may terminate this Agreement in accordance with Sections 7 and 8, or adopt customized criteria for a mutually agreed upon fee. After thirty (30) calendar days, the Client will be deemed to have approved any proposed changes to the criteria unless it has notified the Manager in writing of its objection as described herein.

(c) The Manager shall charge a fee of \$15 for each prior authorization processed requiring clinical intervention.

4.5 Rebates. The Manager shall collect rebates on behalf of the Client as set forth in Exhibit A attached hereto. The Manager contracts with certain pharmaceutical manufacturers and other third parties for rebate programs. The Manager negotiates rebates and/or discounts on its own behalf over its aggregate book business and not on behalf of any client or plan. The Manager retains the exclusive right to enter into contracts with any pharmaceutical manufacturer or distributor with respect to rebates or discounts for the Services provided under this Agreement. The Client acknowledges that whether and to what extent manufacturers are willing to provide rebates to the Client will depend upon the Plan Design adopted by the Client, as well as the Manager receiving sufficient information regarding each claim that is submitted to manufacturers for rebates. The Manager shall withhold payment of all rebates until an executed contract has been signed by the Client. In addition, upon termination prior to the end of the initial term or non-renewal of this Agreement, the Manager may retain any unremitted rebates as of the date of termination. The Manager may set-off against any amounts payable to the Client any amounts determined to be due from the

Client. The Client acknowledges that rebates will not be paid with respect to claims submitted by Medicaid agencies or other federal or state healthcare programs

4.6 Audits of Member Pharmacies. The Manager shall maintain criteria, which it may amend from time to time, to establish when and how a Member Pharmacy shall be audited to determine compliance with its agreement with the Manager. The audit may be conducted by the Manager's internal auditors or its outside auditors, and at the pharmacy or at the Manager's site by a review of electronically transmitted claims. To the extent the Manager determines as the result of its auditing procedures, that amounts have been overpaid to Member Pharmacies due to pharmacy error or fraud, the Manager will make reasonable attempts to collect such overpayments. Any collected overpayments will be paid to the Client subject to reasonable administrative fees, which shall be 15% of collected overpayments. The Manager shall not be required to institute litigation to collect any overpayments. The Manager's obligations to attempt collection shall be the Manager's sole obligation and liability with respect to remedying such overpayments.

4.7 Client's Authority over Plan. The Client acknowledges that it has the sole authority to control and administer the Plan. The Client further acknowledges that the Manager is engaged to perform services as an independent contractor and not as a fiduciary of the plan or as an employee or agent of the Client, or any plan contract administrator. Nothing in this Agreement shall be construed or deemed to confer upon the Manager any responsibility for or control over the terms or validity of the Plan. The Manager shall have no final discretionary authority over or responsibility for the Plan's administration. Further, because the Manager is not an insurer, plan sponsor, plan contract administrator, or a provider of health services to Participants, the Manager shall have no responsibility for (i) funding of Plan benefits; (ii) any insurance coverage relating to the Client, any Plan contract administrator, the Plan or the Participants; or (iii) the nature or quality of professional health services rendered to Participants. In all cases, the Client shall have the final responsibility for all decisions with respect to coverage of the prescription drug program and the benefits allowable hereunder, including determining whether any rejected or disputed claim will be allowed.

4.8 Drug Classification and Pricing. The Manager shall use the latest edition of the First Data Bank Blue Book (with supplements), or the Medi-Span Master Drug Pricing Source (with supplements), or other industry comparable database, as the source for purposes of pricing and classifying drugs (e.g., legend vs. over the counter, brand vs. generic) in connection with retail claims pursuant to this Agreement.

4.9 Reports and Statements. The Client will review all reports and statements provided by the Manager and will notify the Manager in writing of any errors or objections within 120 days of receipt. Until the Client notifies the manager of any errors or objections, the Manager will be entitled to rely on the information contained in the report or statements. If the Client does not notify

the Manager of any errors or objections within the 120-day period, the information contained therein will be deemed accurate, complete, and acceptable to the Client.

4.10 Reservation of Rights. The Manager reserves the right to modify or amend the financial provisions of this Agreement in the event of (a) any government imposed change in federal, state or local laws or the interpretation thereof that would make the Manager's performance of its duties hereunder materially more expensive, including, without limitation, any prohibition or restriction on the Manager's ability to receive rebates from pharmaceutical manufacturers; (b) a material change in the scope of services to be performed under the Agreement upon which the financial provisions included in this Agreement are based; or (c) changes made to the methodology by which AWP is calculated or reported that has a material effect on the financial provisions of this Agreement. All modifications or amendments to the financial provisions of this Agreement must be mutually agreed upon by Manager and the Client. The Manager shall provide the Client with: (i) a description of the proposed modifications or amendments; and (ii) supporting documentation and all information that the Client requests to evaluate the event that has caused the Manager to request modification or amendment of the Agreement, the impact of the event upon the Manager, and/or the Manager's proposed modification or amendment. If the parties cannot reach agreement on the proposed modification or amendment, the Agreement may be terminated by either party under Section 8.1 of the Agreement.

4.11 Exclusivity. Except for the Participants who opt to enroll in Client's HMO and HDHP plans (through HMSA or Kaiser), Client hereby grants the Client hereby grants the Manager during the term of this Agreement and any renewals hereof, the exclusive right to provide the Services to the Client. The Client further agrees that, during the term of this Agreement, and any renewals hereof, it will not negotiate, contract, or agree with any pharmaceutical manufacturer for the purpose of obtaining rebates or other discounts related to Participants under this Agreement. The Client also agrees to cancel any existing agreements or contracts with any pharmaceutical manufacturers related to such rebates or discounts as of the effective date of this Agreement. In the event of a breach of this Section by the Client, the Manager may terminate this Agreement or the Client's participation in the rebates and may retain 100% of any and all rebates that have not been remitted to the Client as of the date of such termination. Notwithstanding the foregoing, it is understood and agreed that this Section applies only to the Hawaii Employer-Union Health Benefits Trust Fund and not to other departments and agencies of the State of Hawaii.

SECTION 5. PAYMENTS DUE.

5.1 The Manager shall provide the Client with Semi-Monthly Account Statements in an electronic format, which shall include (i) the cost of claims for prescriptions approved for payment under the Plan in accordance to the pricing terms set forth in Exhibit A attached hereto and (ii) the administrative fee due to the Manager for processing and paying claims during the preceding period in

accordance with Exhibit A attached hereto (the "Administrative Fee"). Subject to the provisions of Section 103-10, Hawaii Revised Statutes, Client agrees to make all payments by check or by wire transfer to the account set forth in Exhibit B within thirty (30) days from the date of the Semi-Monthly Account Statement. Subject to the provisions of Section 103-10, Hawaii Revised Statutes, any additional charges for special services, supplies, reports, etc. for which a separate fee is agreed to by the parties shall be remitted by the Client within thirty (30) days of the date of such Semi-Monthly Account Statement or other invoice by the Client from the Manager.

5.2 In the event the Client objects to any cost in the Semi-Monthly Account Statement, the Client is still obligated to remit payment of the full payment amount to the Manager within agreed upon payment terms. Within thirty (30) business days of the Client's receipt of the account statement, the Client shall identify and fully explain the basis for such objections in writing to the Manager. The Client and the Manager shall then work together to determine the validity of the claims to which the Client has objected, and if the Client's objection is valid, a credit shall be given on the next Semi-Monthly Account Statement.

5.3 If at any time during the term of this Agreement, the Manager shall determine that there are reasonable grounds for insecurity as to the ability of the Client to meet its financial commitments hereunder as they become due, the Manager shall have the right to require the Client to provide security in such amount and form as the Manager deems necessary. In connection with the foregoing paragraph the Client has elected to deposit with the Manager prior to the Effective Date of this Agreement an amount equal to one (1) months estimated claims costs. Such deposit shall be held in an interest bearing account. The Client shall be entitled to a credit for all interest accrued in connection therewith.

5.4 If the Client is delinquent in payment, the Manager may, upon thirty (30) days written notice, in addition to its remedies under this Agreement, at law or in equity, do any or all of the following: (i) suspend performance of any or all of the Manager's obligation under or in connection with this Agreement, including the Manager's obligation to process claims; (ii) apply all or any portion of any security posted by the Client with the Manager to the Client's delinquent account; or (iii) set off against any amounts payable to the Client (including any rebates the Manager receives from manufacturers on behalf of the Client) any amounts due to the Manager (including late interest charges).

5.5 The amount that the Client pays to the Manager under this Section 5 is not an asset of the Client's prescription benefit plan.

SECTION 6. MAINTENANCE OF RECORDS; AUDIT.

6.1 The Manager shall maintain in paper or electronic format, current files with respect to the processing, payment and denial of eligible claims and shall retain such records for a period

of six (6) years after the transaction occurred or as otherwise required by law.

6.2 Upon not less than sixty (60) days prior written notice and subject to Section 6, the Client, or a mutually acceptable third party (which shall include any department or agency of the State of Hawaii) designated by the Client, may conduct an annual audit to review such records maintained by the Manager to verify the Manager's compliance with its obligations under this Agreement related to the administration of the Plan. The Client shall be responsible for all expenses of the audit, except the Manager's costs related to the provision records. Agreements with vendors, pharmaceutical distributors, Member Pharmacies or other providers of products and services to NMHC may be reviewed by Client at NMHC's offices. The Client acknowledges that it shall not be entitled to audit: (i) documents that the Manager deems proprietary, confidential or trade secret without execution of a confidentiality agreement as provided in Section 6.4 below; and (ii) documents that the Manager is barred from disclosing by law or pursuant to an obligation of confidentiality to a third party even with a confidentiality agreement such as is provided for in Section 6.4 below. All claim forms and other records pertaining to the management of the Plan and the System are the property of the Manager. Notwithstanding the foregoing, if the Audit reveals a 7.5% or greater variance of what the Client should actually have paid, the Manager shall reimburse the Client for its reasonable costs in connection with the Audit.

6.3 For purposes of audit verification, the Client shall maintain eligibility records for Participants for a period of twelve (12) months from the date of the review. Such eligibility records may be reviewed by the Manager upon the same terms and conditions as are applicable to the Client's right of review stated above.

6.4 Any third party auditor engaged by the Client shall execute a confidentiality agreement with the Manager in a form and substance reasonably acceptable to the Manager prior to conducting an audit.

6.5 Within thirty (30) days of the execution of a mutually acceptable release document covering the audit period, any adjustments, payments and/or reimbursements determined to be necessary as a result of any examination or audit shall be paid by the appropriate party.

6.6 The Manager disclaims all liability arising out of the Client's use or dissemination of the data, records, reports, summaries and other information provided by the Manager to the Client under this Agreement; provided, however, that this provision shall not affect the Manager's liability to the Client arising out of inaccurate or incorrect data or information that is provided by Manager to Client where such data or information is used or disseminated in the normal course of Client's business or where Manager should reasonably anticipate that such data or information will be relied upon by Client.

SECTION 7. TERM OF AGREEMENT.

7.1 The term of this Agreement is set forth in the Contract for Goods and Services Based Upon Competitive Sealed Proposals, effective July 1, 2007, between Client and Manager to which this Agreement is attached.

SECTION 8. TERMINATION OF AGREEMENT.

8.1 Upon thirty (30) days written notice, Manager shall have the right to suspend or terminate this Agreement upon the occurrence of the following events: (a) an irresolvable dispute over any fee increase that is permitted under this Agreement; or (b) the failure of Client to remit payments due Manager in accordance with Section 5 above.

8.2 Manager may terminate this Agreement upon a material breach by the Client under this Agreement (except as otherwise set forth in Section 8.1 above) if such breach is not remedied within sixty (60) days following the receipt of a written notice from the Manager specifying the nature of such breach.

8.3 Unless otherwise agreed to by the parties at the time of termination, this Agreement shall continue to be operative with respect to obligations incurred hereunder prior to the date of termination, including, but not limited to any obligations in connection with issued and unexpired Participant Identification Cards issued by the Manager on behalf of the Client.

8.4 Client may terminate this Agreement without cause upon ninety (90) days written notice.

SECTION 9. INDEMNIFICATION AND LIMITATIONS ON LIABILITY.

9.1 Warranty. This Agreement is not a contract for the sale of goods. The Manager will perform the Services in a good and workmanlike manner in accordance with the customs, practices, and standards of providers skilled in the industry. EXCEPT AS WARRANTED IN THIS SECTION 9.1, THE MANAGER DISCLAIMS ALL EXPRESS AND ALL IMPLIED WARRANTIES OF ANY KIND, INCLUDING THE SUITABILITY FOR ANY PARTICULAR PURPOSE OF THE DATA GENERATED THROUGH THE MANAGER'S SYSTEM. THE MANAGER RELIES ON FIRST DATA BANK, MEDI-SPAN, OR INDUSTRY COMPARABLE DATABASES IN PROVIDING CLIENT AND PARTICIPANTS WITH DRUG UTILIZATION REVIEW SERVICES. THE MANAGER HAS UTILIZED DUE DILIGENCE IN COLLECTING AND REPORTING THE INFORMATION CONTAINED IN THE DATABASES AND HAS OBTAINED SUCH INFORMATION FROM SOURCES BELIEVED TO BE RELIABLE. THE MANAGER, HOWEVER, DOES NOT WARRANT THE ACCURACY OF REPORTS, ALERTS, CODES, PRICES, OR OTHER DATA CONTAINED IN THE DATABASES. THE MANAGER DOES NOT WARRANT THAT ITS SERVICES WILL BE UNINTERRUPTED OR ERROR FREE.

9.2 The Manager does not direct or exercise any control over the professional judgment exercised by any pharmacist in dispensing prescriptions or otherwise providing pharmaceutical related services. Member Pharmacies are independent contractors of the Manager, and the Manager shall have no liability to the Client, any Participant, or any other person or entity for any act or omission of any Member Pharmacy or its agents or employees.

SECTION 10. CONFIDENTIALITY.

The confidentiality provisions set forth in Sections 10.1 and 10.2 below are subject to the provisions of Chapter 92F of the Hawaii Revised Statutes and the regulations enacted thereunder, as the same may be amended from time to time (collectively, the "Uniform Information Practices Act"). The Client agrees that any requests for the Manager's Confidential Information (defined below) under the Uniform Information Practices Act shall be promptly disclosed to the Manager in order to allow Manager to seek injunctive or other relief.

10.1 The Manager and the Client each acknowledges that certain information, reports and data generated under this Agreement are subject to applicable confidentiality of medical record laws, and the parties agree to comply in all respects with such laws. The Client represents that it has received or will obtain Participant consents and authorizations required, if any, for the Manager to obtain, possess, and use prescription and medical information relating to the Participants for the purposes described in this Agreement, and for the Manager to contact Participants, Participants' physicians, and Member Pharmacies in order to promote therapeutic and generic substitution opportunities and to perform any other services or activities contemplated by this Agreement that may require such contact. Subject to Sections 10 and 11 of this Agreement, the Manager and the Client may use, reproduce, or adapt information obtained in connection with this Agreement, including claims information and eligibility information, in any manner they deem appropriate, except that each party and its agents, employees and contractors shall maintain the confidentiality of this information to the extent required by applicable law, and may not use the information in any way prohibited by law. The Manager shall retain full ownership rights over all compilations, analyses, and reports prepared by the Manager.

10.2 (a) The Manager and the Client agrees to ensure that the terms of this Agreement and any information that it (the "Receiving Party") may acquire relating to the business of the other party (the "Disclosing Party") shall not be disclosed or made use of except in furtherance of this Agreement or as otherwise permitted hereunder (such information to be referred to as "Confidential Information"). The Receiving Party agrees to use the Confidential Information solely in connection with the current or contemplated business relationship between the parties and not for any purpose other than as authorized by this Agreement without the prior written consent of an authorized representative of the Disclosing Party. No other right or license,

whether expressed or implied, in the Confidential Information is granted to the Receiving Party hereunder. Title to the Confidential Information will remain solely in the Disclosing Party. Confidential Information of the Manager shall include business policies or practices, employee and client lists, and Confidential Information of its subsidiaries and other affiliates.

(b) Notwithstanding anything in the foregoing to the contrary, the Receiving Party may disclose Confidential Information pursuant to any governmental, judicial, or administrative order, subpoena, discovery request or similar method, provided that the Receiving Party promptly notifies the Disclosing Party in writing of such demand for disclosure so that the Disclosing Party, at its sole expense, may seek to make such disclosure subject to a protective order or other appropriate remedy to preserve the confidentiality of the Confidential Information. The Receiving Party agrees that it shall not oppose and shall cooperate with the Disclosing Party with respect to any such request for a protective order or other relief. Notwithstanding the foregoing, if the Disclosing Party is unable to obtain or does not seek a protective order and the Receiving Party is legally compelled to disclose such Confidential Information, disclosure of such Confidential Information may be made without liability.

(c) Notwithstanding anything in the foregoing to the contrary, Confidential Information shall not include information which: (i) was demonstrably known by the Receiving Party prior to receiving the Confidential Information from the Disclosing Party; (ii) becomes rightfully known to the Receiving Party from a third-party source under no obligation to Disclosing Party to maintain confidentiality; (iii) is or becomes publicly available through no fault of or failure to act by the Receiving Party in breach of this Agreement; (iv) is required to be disclosed in a judicial or administrative proceeding, or is otherwise required to be disclosed by law, although the requirements of paragraph 4 hereof shall apply prior to any disclosure being made; and (v) is or has been independently developed by the Receiving Party, or its employees, consultants or agents without violation of the terms of this Agreement or reference or access to any Confidential Information.

SECTION 11. HIPAA COMPLIANCE.

11.1 As part of its continued efforts to comply with the Health Insurance Portability and Accountability Act of 1996 (HIPAA), the Manager hereby represents and covenants that on the applicable compliance dates established by the Department of Health and Human Services (HHS) or the United States Congress, it shall comply with (i) the requirements applicable to "business associates" under 42 C.F.R. §164.504, and (ii) the electronic transactions standards for the transmission of health information specified in 45 CFR Part 162. The parties hereto agree to the terms of the Business Associate Addendum attached hereto as Exhibit C. The Client agrees to fully cooperate with the Manager in carrying out its obligations set forth in this Section 11.1.

SECTION 12. NOTICES.

12.1 All notices, requests, demands, and other communications hereunder shall be made in accordance with the Contract and unless otherwise notified has been received to the contrary, shall be delivered, sent, faxed, or e-mailed to:

If to the Manager:
National Medical Health Card Systems, Inc.
26 Harbor Park Drive
Port Washington, NY 11050
Attention: President
Telephone: 800-251-3883
Fax: 516- 626-8002

If to the Client:
Hawaii Employer-Union Health Benefits Trust Fund
City Financial Tower
201 Merchant Street, Suite 1520
Honolulu, HI 96813
Attention: Administrator
Telephone: 808-587-5434
Fax: 808-586-2320

SECTION 13. MISCELLANEOUS.

13.1 Disclosure. (a) In addition to the compensation in the form of fees described in Exhibit A hereto, the Manager may receive, directly or indirectly, additional compensation through (i) margins from lower contract pricing with participating pharmacies; (ii) defined services provided on behalf of prescription drug manufacturers intended to inform patients and/or health care professionals of significant clinical findings or situations that offer Participants the opportunity to save on out-of-pocket costs for their prescription drugs; and (iii) fees or other compensation from pharmaceutical manufacturers, including, without limitation, administrative fees not exceeding three percent of the aggregate cost of the pharmaceutical products dispensed to Participants, and fees for property provided or services rendered to a manufacturer. In addition, the Manager's mail service pharmacy or specialty pharmacy may negotiate on its own behalf directly with manufacturers for discounts, including rebated discounts based on market share or other factors. The term rebates as used in this Agreement does not include these fees and discounts which belong exclusively to the Manager, its mail service pharmacy or its specialty pharmacy, respectively. The Client acknowledges for itself, its Participants, and any employee welfare benefit plan, that, except as may be expressly provided herein, neither it, nor any Participant, nor any employee welfare benefit plan in which a Participant may participate, has a right to receive, or possess any beneficial interest in, any such discounts or payments. In addition, the Manager may, from time to time, receive payment from pharmacies for the Manager's costs in connection with transmitting claims.

(b) The Client acknowledges that the Manager has made all necessary disclosures to it if and to the extent required by law and the Client agrees to comply with any disclosure requirements to

Participants relating to this Agreement if and to the extent required by law.

13.2 Compliance with Law; Change in Law. (a) Each party is responsible for ensuring its compliance with any laws and regulations applicable to its business. No party shall make payments or perform services under this Agreement that would be prohibited by law. No part of this Agreement shall be construed to induce or encourage the referral of patients, and no payment made pursuant to this Agreement of any other agreement between the Manager and the Client shall be construed to induce the purchase, lease, order or arrangement for the furnishing of healthcare products or services. The Client shall be responsible for any governmental or regulatory charges and taxes imposed on its prescription drug program, other than taxes based on the net income of the Manager.

(b) The Client shall ensure that its activities in regard to the prescription drug program are in compliance with ERISA, if applicable. The Client acknowledges and agrees that it is responsible for disclosing to its Participants any and all information relating to the prescription drug program as required by law to be disclosed, including any information relating to co-payments, coinsurance and/or deductibles, any other program coverage and eligibility requirements in connection with the prescription drug program, and any other information concerning commissions, rebates, discounts, and price differentials.

13.3 Property. All computer programs, software or other data generated or utilized by the Manager are and at all times shall remain the property of the Manager.

13.4 Binding Effect. The rights created by this Agreement shall inure to the benefit of, and the obligations created hereby shall be binding upon, the successors, heirs and assigns of the respective parties hereto.

13.5 Enforceability. If any provision hereof shall be deemed to be unenforceable by law, the remaining provisions of this Agreement shall be enforced and the offending provision shall be deemed to be re-written so as to give maximum effect to the intent of the parties.

13.6 Headings. The headings or captions in this Agreement are for convenience and reference only and do not in any way modify, interpret or construe the intent of the parties or affect any of the provisions of this Agreement.

13.7 Third Party Beneficiary Exclusion. This Agreement is not a third party beneficiary contract, nor shall this Agreement create any rights on behalf of Participants as against the Manager. The Client and the Manager reserve the right to amend, cancel or terminate this Agreement without notice to, or consent of, any Participant.

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IN WITNESS WHEREOF, the parties have caused this Agreement to be duly executed as of the date and year first above written by their respective officers or representatives, duly authorized to do so.

NATIONAL MEDICAL HEALTH CARD SYSTEMS, INC.

By: James F. Smith

Print Name: James F. Smith

Title: President & CEO

Date: MAR 26 2007

(Name of the Client)

By: James Wilkins

Print Name: _____

Title: _____

Date: MAR 28 2007

EXHIBIT A

FEES AND PRICING RATES

Administrative Fees. The Manager will manage the Plan on behalf of the Client and provide the Services described herein for the following Administrative Fees:

Retail:	\$0.50 per paid claim
Mail Service:	\$0.50 per paid claim
Specialty:	\$0.50 per paid claim
Direct Participant Reimbursement (DMR)/Paper Claim:	\$1.50 per processed claim

Retail Pharmacy. For prescriptions billed to the Client, electronically processed and dispensed to a Participant through the Manager's retail pharmacy network, the Client shall pay the Manager the following rates:

Brand-Name Drugs:	lesser of U&C or AWP minus 15.1%
Dispensing Fee:	\$1.87

Generic Drugs:	
MACed Items:	lesser of U&C or the Manager's MAC pricing.
Non-MACed Items:	lesser of U&C or AWP minus 15.5%
Dispensing Fee:	\$1.87

Mail Service Pharmacy. For prescriptions dispensed by the Manager through one of its mail service pharmacies to a Participant, the Client shall pay the Manager the following rates:

Brand:	AWP minus 24%
Dispensing Fee:	\$0.00

Generic:	AWP minus 55%
Dispensing Fee:	\$0.00

- If the Manager fails to achieve any pricing or discount guarantees pursuant to the terms set forth herein relating to retail pharmacy or mail service pharmacy, the Manager shall reimburse Client for the differences between the guaranteed discounts set forth above and the actual rates delivered.
- To prevent the disruption of services to Participants, the Manager's mail service pharmacy may dispense drugs even if the prescription is not accompanied by the correct copay, deductible, or coinsurance amount as applicable and the Client shall be liable to the Manager for such amounts if reasonable collection efforts by the Manager fail.

Manufacturer Rebates. One hundred percent (100%) of all gross formulary monies collected by NMHC related to drug utilization of the Plan Sponsor will be delivered to the Plan Sponsor.

General Notes

- The retail network pharmacy rates set forth above requires a 25% maintenance at retail (90 days supply) penetration.
- Dispensing fee refers to the amount paid to the participating pharmacy for filling a prescription. The Manager's contract pricing with participating pharmacies may be higher or lower than the Client contracted pricing. Pharmacy professional fees may be higher than quoted amounts for the use of those pharmacies or chains of pharmacies whose

national network fee schedules do not allow for discounted dispensing fees. Non participating pharmacies in the discounted dispensing fee network may vary due to market factors.

- The discount off AWP set forth above is an effective average rate, in aggregate, as measured over the term of this Agreement. In calculating the effective AWP discount, the Manager may include the value of all other discounts delivered in connection with this Agreement including but not limited to other savings and reimbursements delivered hereunder by the Manager, including, but not limited to U&C, prior authorization and on-line DUR. Any excess discount or reimbursement delivered under any discount set forth above may be credited to any other discount or reimbursement contracted for under this Agreement.
- U&C or usual and customary refers to the retail price charged by a Member Pharmacy for the particular drug in a cash transaction on the date the drug is dispensed as reported to the Manager by the Member Pharmacy. U&C is estimated to be up to an additional 1.5% discount off the brand AWP. U&C is established by the retail pharmacy and is not controlled by the Manager. U&C is driven solely by the competitiveness of the pharmacy provider's marketplace for a specific drug at a specific time in order to create walk-in-business in their store. The Client is not charged a dispensing fee on U&C claims. If applicable to the Plan Design, in instances where the U&C discount is greater than the discount off AWP, the U&C discount shall apply to the aggregate book of business of the Manager, as measured over the term of this Agreement.
- "Single source generic drugs" or "Non-MAC generic drugs" are generic drugs that have either recently come off patent and do not generate discounts traditionally delivered by generic drugs, or have an exclusive pharmaceutical manufacturer. For purposes of pricing, single source generic drugs and Non-MAC generic drugs ordinarily will be treated as brand drugs.
- The Manager negotiates rebates and/or discounts over its aggregate book of business and not on behalf of any client. Rebates shall be based upon approved claims submitted on behalf of the Client, allocable to the Client. In addition, the Manager negotiates discounts on its own behalf as a purchaser of pharmaceutical products for its mail service and specialty pharmacies. The term rebates as used herein shall not include such discounts referred to in the prior sentence (ie. prompt pay discounts and bulk purchase discounts), which are not attributable to the Client's utilization and belong exclusively to the Manager. The rebate estimates are based on a qualified three tier plan design with a minimum copay differential of \$15 between preferred and non-preferred brand drugs and the Client's one hundred percent compliance with NMHC's preferred drug Formulary.
- The above estimated rebate amounts are respectively based upon an average 30 and 90 days supply prescription and NMHC's historical first quarter 2006 book-of-business experience. Due to the absence of detailed historical utilization information, should the actual program performance materially differ from the underlying assumptions used to develop this financial proposal or industry changes occur beyond NMHC's control, NHC reserves the right to revisit and proportionately adjust its estimate.
- All fees and rates are guaranteed during the term of this Agreement, but may be subject to change pursuant to the provisions set forth in this Agreement.

ADDITIONAL SERVICES

The following additional services are not included in the Manager's standard Administrative Fees and are available to the Client for an additional charge as set forth below:

Communication materials mailed directly to individual participants	Postage and handling fees
Clinical Prior Authorization: Prior Authorizations requiring clinical intervention	\$15 per clinical prior authorization
EOB Statements	\$1.50 (inclusive of postage)
Ad hoc Reports: Customized reports other than ad hoc reports the Manager has available	\$175.00 to \$225 per hour
Disease Management and Wellness Programs: Includes compliance, patient monitoring and outcomes	TBD
NMHC <i>Integrail</i> : Health Information Management services	TBD
Participant Survey Services	TBD

EXHIBIT B

National Medical Health Card Systems, Inc.
26 Harbor Park Drive
Port Washington, NY 11050

Please wire transfer to:

BANK:	JP Morgan Chase Bank
ADDRESS:	4 New York Plaza New York, NY
FOR ACCOUNT OF:	National Medical Health Card Systems, Inc.
ACCOUNT NUMBER:	777-739313
ABA NUMBER:	021000021

EXHIBIT C
BUSINESS ASSOCIATE ADDENDUM

This Agreement, is effective as of July 1, 2007, between the Hawaii Employer-Union Health Benefits Trust Fund, State of Hawaii (hereinafter the "STATE"), by its Administrator, whose address is 201 Merchant Street, Suite 1520, Honolulu, Hawaii 96813, and National Medical Health Card Systems, Inc. (hereinafter "BUSINESS ASSOCIATE"), a corporation under the laws of the State of Delaware, whose business address is as follows: 103 Foulk Rd., Ste. 202, Wilmington, Delaware 19803.

RECITALS

A. The STATE has procured the following from BUSINESS ASSOCIATE: goods and services related to the administration of self-funded prescription drug plans under STATE's Request for Proposals No. 07-001 and the resulting Contract for Goods and Services Based Upon Competitive Sealed Proposals between STATE and BUSINESS ASSOCIATE, effective July 1, 2007;

B. BUSINESS ASSOCIATE's provision of goods and/or performance of services may require that the STATE disclose Protected Health Information (defined below) to BUSINESS ASSOCIATE, that BUSINESS ASSOCIATE use Protected Health Information disclosed to it by the STATE, that BUSINESS ASSOCIATE create or receive Protected Health Information on behalf of the STATE, and/or that BUSINESS ASSOCIATE create, receive, maintain or

transmit Electronic Protected Health Information (defined below) on behalf of the STATE;

C. Both parties are committed to complying with the Privacy and Security Laws (defined below) with respect to Protected Health Information and Electronic Protected Health Information; and

D. This Agreement sets forth the terms and conditions pursuant to which Protected Health Information and Electronic Protected Health Information that is disclosed to BUSINESS ASSOCIATE, used by BUSINESS ASSOCIATE, and/or created, received, maintained or transmitted by BUSINESS ASSOCIATE on behalf of the STATE, will be handled.

TERMS AND CONDITIONS

1. Introduction: The STATE, as defined in this Agreement, has determined that it is a Covered Entity or a Health Care Component of a Covered Entity under the Privacy and Security Rules (defined below). In addition, the STATE is subject to privacy requirements under Article I, Section 6 of the Hawaii Constitution, Chapter 92F of the Hawaii Revised Statutes, and other Federal and State laws. The parties acknowledge that entry into this Agreement is necessary and desirable: (a) in order to protect the privacy of Protected Health Information and the security of Electronic Protected Health Information in accordance with the Privacy and Security Laws; and (b) because

BUSINESS ASSOCIATE is a "business associate" of the STATE as that term is used in 45 Code of Federal Regulations ("C.F.R.") § 160.103.

2. Definitions:

- a. Except as otherwise defined herein, any and all capitalized terms in this Agreement shall have the definitions set forth in the Privacy and Security Rules.
- b. Agreement. "Agreement" shall mean this agreement between STATE and BUSINESS ASSOCIATE, and any and all attachments, exhibits and special conditions attached hereto.
- c. Electronic Protected Health Information. "Electronic Protected Health Information" shall have the meaning set forth in 45 C.F.R. § 160.103. In addition, "Electronic Protected Health Information" shall include any other "Protected Health Information" that is created, received or maintained in electronic media, or transmitted by electronic media, by or to BUSINESS ASSOCIATE on behalf of the STATE.
- d. HIPAA. "HIPAA shall mean the Health Insurance Portability and Accountability Act of 1996, Pub. L. No. 104-191.
- e. Individual. "Individual" means the person who is the subject of Protected Health Information, and shall include a person who qualifies as a personal representative under 45 C.F.R. § 164.502(g).
- f. Individually Identifiable Health Information. "Individually Identifiable Health Information" shall have the meaning set forth in 45 C.F.R. § 160.103.
- g. Privacy Rule. "Privacy Rule" shall mean the Standards for Privacy of Individually Identifiable Health Information at 45 C.F.R. Part 160 and Part 164, Subparts A and E, as the same may be amended from time to time.
- h. Privacy and Security Laws. "Privacy and Security Laws" shall include: the Privacy and Security Rules; HIPAA; Article I, Section 6 of the Hawaii Constitution; Chapter 92F of the Hawaii Revised Statutes; and other Federal and State privacy statutes or rules that apply to Protected Health Information or Electronic Protected Health Information.
- i. Protected Health Information. "Protected Health Information" shall have the meaning set forth in 45 C.F.R. § 160.103. In addition, "Protected Health Information" shall include any other information that the STATE expressly identifies to BUSINESS ASSOCIATE as being "Protected Health Information" subject to this Agreement.
- j. Secretary. "Secretary" shall mean the Secretary of the U.S. Department of Health and Human Services or designee.
- k. Security Rule. "Security Rule" shall mean the Health Insurance Reform: Security Standards at 45 C.F.R. Part 160, Part 162, and Part 164, Subparts A and C, as the same may be amended from time to time.

3. Obligations and Activities of BUSINESS ASSOCIATE

- a. BUSINESS ASSOCIATE agrees to not use or disclose Protected Health Information other than as permitted or required by

this Agreement or as Required By Law.

- b. BUSINESS ASSOCIATE agrees to use appropriate safeguards to prevent use or disclosure of Protected Health Information consistent with the requirements of this Agreement.
- c. BUSINESS ASSOCIATE agrees to implement administrative, physical, and technical safeguards (as those terms are used in the Security Rule) that reasonably and appropriately protect the confidentiality, integrity and availability of Electronic Protected Health Information that it creates, receives, maintains or transmits on behalf of the STATE. BUSINESS ASSOCIATE further agrees to safeguard such information in accordance with any rules, policies, procedures and directions adopted or implemented by STATE to the extent that such are communicated to BUSINESS ASSOCIATE.
- d. BUSINESS ASSOCIATE agrees to ensure that any agent or subcontractor to whom it provides Protected Health Information agrees to the same restrictions and conditions that apply through this Agreement to BUSINESS ASSOCIATE with respect to such information. BUSINESS ASSOCIATE also agrees to ensure that any agent or subcontractor to whom it provides Electronic Protected Health Information agrees to implement reasonable and appropriate administrative, physical and technical safeguards (as those terms are used in the Security Rule) to protect the confidentiality, integrity and availability of such information. BUSINESS ASSOCIATE further agrees to ensure that any such agent or subcontractor shall safeguard such information in accordance with any rules, policies, procedures and directions adopted or implemented by STATE to the extent that such are communicated to BUSINESS ASSOCIATE.
- e. BUSINESS ASSOCIATE agrees to make internal practices, books, and records, including policies and procedures, Protected Health Information and Electronic Protected Health Information available to STATE and/or to the Secretary, at reasonable times and places or as designated by the STATE and/or the Secretary, for purposes of determining compliance with the Privacy and Security Laws including, but not limited to, the Privacy Rule or Security Rule.
- f. BUSINESS ASSOCIATE agrees to document disclosures of Protected Health Information and information related to such disclosures as would be required for STATE to respond to a request by an Individual for an accounting of disclosures of Protected Health Information in accordance with 45 C.F.R. § 164.528.
- g. BUSINESS ASSOCIATE agrees to provide to STATE or an Individual information collected in accordance with section f, above, to permit STATE to respond to a request by an Individual for an accounting of disclosures of Protected Health Information

in accordance with 45 C.F.R.
§ 164.528.

h. BUSINESS ASSOCIATE agrees to provide access to Protected Health Information in the Designated Record Set to STATE or, as directed by STATE, to an Individual to the extent and in the manner required by 45 C.F.R. § 164.524.

i. BUSINESS ASSOCIATE agrees to make Protected Health Information available for amendment and to incorporate any amendments to Protected Health Information that the STATE directs or agrees to in accordance with the requirements of 45 C.F.R. § 164.526.

j. BUSINESS ASSOCIATE agrees to mitigate, to the extent practicable, any harmful effect that is known to BUSINESS ASSOCIATE of a disclosure or use of Protected Health Information or Electronic Protected Health Information by BUSINESS ASSOCIATE in violation of the requirements of this Agreement.

k. BUSINESS ASSOCIATE agrees to report to STATE any disclosure or use of Protected Health Information not provided for by this Agreement of which it becomes aware. BUSINESS ASSOCIATE further agrees to report to STATE any security incidents that are required to be reported by or to the STATE under 45 C.F.R. Part 164, particularly 45 C.F.R. § 164.314.

4. Permitted Uses and Disclosures by BUSINESS ASSOCIATE

a. General Use and Disclosure Provisions. Except as otherwise limited in this

Agreement, BUSINESS ASSOCIATE may disclose or use Protected Health Information to perform functions, activities, or services for, or on behalf of, STATE as specified in this Agreement, provided that such disclosure or use would not violate any Privacy and Security Laws if done by STATE.

b. Specific Use and Disclosure Provisions

(i) Except as otherwise limited in this Agreement, BUSINESS ASSOCIATE may use Protected Health Information for the proper management and administration of the BUSINESS ASSOCIATE or to carry out the legal responsibilities of the BUSINESS ASSOCIATE.

(ii) Except as otherwise limited in this Agreement, BUSINESS ASSOCIATE may disclose Protected Health Information for the proper management and administration of the BUSINESS ASSOCIATE, provided that disclosures are Required By Law, or BUSINESS ASSOCIATE obtains reasonable assurances from the person to whom the information is disclosed that it will remain confidential and used or further disclosed only as Required By Law or for the purpose for which it was disclosed to the person, and the person notifies the BUSINESS ASSOCIATE of any instances of which it is aware in which the confidentiality of the information has been breached.

(iii) Except as otherwise limited in this Agreement, BUSINESS ASSOCIATE may use Protected Health Information to provide Data Aggregation services to STATE as permitted by 45 C.F.R. § 164.504(e)(2)(i)(B).

(iv) BUSINESS ASSOCIATE may use Protected Health Information to report violations of law to appropriate Federal and State authorities, consistent with 45 C.F.R. § 164.502(j)(1).

5. Permissible Requests by STATE. STATE shall not request BUSINESS ASSOCIATE to disclose or use Protected Health Information in any manner that would not be permissible under the Privacy and Security Laws if done by STATE.

6. Obligations of STATE.

a. Limitations on Privacy Practices. STATE shall notify BUSINESS ASSOCIATE of any limitation(s) in STATE's notice of privacy practices in accordance with 45 CFR § 164.520, to the extent that such limitation may affect BUSINESS ASSOCIATE's use or disclosure of Protected Health Information.

b. Changes in Permission. STATE shall notify BUSINESS ASSOCIATE of any changes in, or revocation of, permission by any Individual to use or disclose Protected Health Information, to the extent that such changes may affect BUSINESS ASSOCIATE's use or disclosure of Protected Health Information.

c. Restrictions on Use. STATE shall notify BUSINESS ASSOCIATE of any restriction to the use or disclosure of Protected Health Information that STATE has agreed to in accordance with 45 CFR § 164.522, to the extent that such restriction may affect BUSINESS ASSOCIATE's use or disclosure of Protected Health Information.

d. Representation. STATE represents and warrants that to the extent required by applicable federal or state law, it has entered or will enter into "BUSINESS ASSOCIATE Agreements" with any third parties to which STATE directs and authorizes BUSINESS ASSOCIATE to disclose PHI.

7. Termination for Cause. In addition to any other remedies provided for by this Agreement, upon STATE's knowledge of a material breach or violation by BUSINESS ASSOCIATE of the terms of this Agreement, STATE may either:

a. Provide an opportunity for BUSINESS ASSOCIATE to cure the breach or end the violation, and terminate this Agreement if Business Associate does not cure the breach or end the violation within the time specified by the STATE; or

b. Immediately terminate this Agreement if BUSINESS ASSOCIATE has breached or violated a material term of this Agreement and cure is not possible; and

c. If neither termination nor cure is feasible, STATE shall report any violation of the Privacy and Security Rules to the Secretary.

8. Effect of Termination.

- a. Upon any termination of this Agreement, until notified otherwise by STATE, BUSINESS ASSOCIATE shall extend all protections, limitations, requirements, and other provisions of this Agreement to: (i) all Protected Health Information received from or on behalf of STATE or created or received by BUSINESS ASSOCIATE on behalf of STATE; and (ii) all Electronic Protected Health Information created, received, maintained or transmitted by BUSINESS ASSOCIATE on behalf of STATE.
- b. Upon any termination of this Agreement, STATE shall determine whether it is feasible for BUSINESS ASSOCIATE to return or destroy all or any part of: (i) all Protected Health Information received from or on behalf of STATE or created or received by BUSINESS ASSOCIATE on behalf of STATE; and (ii) all Electronic Protected Health Information created, received, maintained or transmitted by BUSINESS ASSOCIATE on behalf of STATE. In connection with the foregoing, upon any termination of the Agreement, BUSINESS ASSOCIATE shall notify the STATE in writing of any and all conditions that make return or destruction of such information not feasible and shall provide STATE with any requested information related to the STATE's determination as to whether the return or destruction of such information is feasible.
- c. If STATE determines that return or destruction of all or any part of the Protected Health Information and Electronic Protected Health Information is feasible, at STATE's option, BUSINESS ASSOCIATE shall return or destroy such information. If STATE directs that BUSINESS ASSOCIATE return or destroy all or any part of the Protected Health Information and Electronic Protected Health Information, it is understood and agreed that BUSINESS ASSOCIATE shall retain no copies of such information.
- d. If STATE determines that return or destruction of all or any part of the Protected Health Information and Electronic Protected Health Information is not feasible or opts not to require the return or destruction of such information, BUSINESS ASSOCIATE shall extend the protections, limitations, requirements, and other provisions of this Agreement to such information for so long as BUSINESS ASSOCIATE maintains such information. STATE understands that BUSINESS ASSOCIATE's need to maintain portions of the Protected Health Information in records of actuarial determinations and for other archival purposes related to memorializing advice provided, can render return or destruction infeasible.
- e. The provisions of this Section 8 shall apply with respect to all terminations of this Agreement, for any reason whatsoever, and to any and all Protected Health Information and Electronic Protected Health Information in the possession or control of any and all agents and

subcontractors of BUSINESS ASSOCIATE.

9. Miscellaneous

a. Regulatory References. A reference in this Agreement to a section in the Privacy and Security Laws means the section in effect or as amended.

b. Amendment. BUSINESS ASSOCIATE and STATE agree to take all actions necessary to amend this Agreement in order for STATE to comply with the requirements of the Privacy Rule, Security Rule, HIPAA, and/or any other Federal or State law that is determined to apply to the Protected Health Information or Electronic Protected Health Information covered by this Agreement. All amendments shall be in writing and executed by both parties.

c. Survival. The respective rights and obligations of STATE and BUSINESS ASSOCIATE under Section 8 above, shall survive the termination of this Agreement.

d. Interpretation. In the event of an inconsistency between the provisions of this Agreement and mandatory provisions of the Privacy and Security Laws, as amended, the Privacy and Security Laws shall control. Where provisions of this Agreement are different than those mandated in the Privacy or Security Laws, but are nonetheless permitted by the Privacy or Security Laws, the provisions of this Agreement shall control. Any ambiguity in this Agreement shall be resolved to permit STATE to

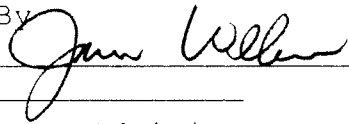
comply with the Privacy and Security Laws.

e. Third Parties. This Agreement is solely between BUSINESS ASSOCIATE and the STATE, and may be enforced only by BUSINESS ASSOCIATE or the STATE. This Agreement shall not be deemed to create any rights in any third parties or to create any obligations or liabilities of BUSINESS ASSOCIATE or the STATE to any third party.

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HAWAII EMPLOYER-
UNION HEALTH
BENEFITS TRUST FUND
("STATE")

By



Administrator

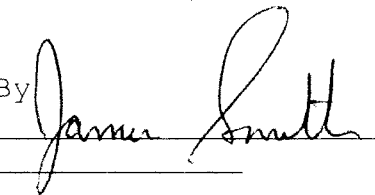
Date:

March 28,
 , 2007

NATIONAL MEDICAL
HEALTH CARD SYSTEMS,
INC.

("BUSINESS
ASSOCIATE")

By



Its

President & CEO

Date:

MAR 26 2007
 , 2007

Deputy Attorney General

GENERAL CONDITIONS

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GENERAL CONDITIONS

1. Coordination of Services by the STATE. The head of the purchasing agency ("HOPA") (which term includes the designee of the HOPA) shall coordinate the services to be provided by the CONTRACTOR in order to complete the performance required in the Contract. The CONTRACTOR shall maintain communications with HOPA at all stages of the CONTRACTOR'S work, and submit to HOPA for resolution any questions which may arise as to the performance of this Contract. "Purchasing agency" as used in these General Conditions means and includes any governmental body which is authorized under chapter 103D, HRS, or its implementing rules and procedures, or by way of delegation, to enter into contracts for the procurement of goods or services or both.
2. Relationship of Parties: Independent Contractor Status and Responsibilities, Including Tax Responsibilities.
 - a. In the performance of services required under this Contract, the CONTRACTOR is an "independent contractor," with the authority and responsibility to control and direct the performance and details of the work and services required under this Contract; however, the STATE shall have a general right to inspect work in progress to determine whether, in the STATE'S opinion, the services are being performed by the CONTRACTOR in compliance with this Contract. Unless otherwise provided by special condition, it is understood that the STATE does not agree to use the CONTRACTOR exclusively, and that the CONTRACTOR is free to contract to provide services to other individuals or entities while under contract with the STATE.
 - b. The CONTRACTOR and the CONTRACTOR'S employees and agents are not by reason of this Contract, agents or employees of the State for any purpose, and the CONTRACTOR and the CONTRACTOR'S employees and agents shall not be entitled to claim or receive from the State any vacation, sick leave, retirement, workers' compensation, unemployment insurance, or other benefits provided to state employees.
 - c. The CONTRACTOR shall be responsible for the accuracy, completeness, and adequacy of the CONTRACTOR'S performance under this Contract. Furthermore, the CONTRACTOR intentionally, voluntarily, and knowingly assumes the sole and entire liability to the CONTRACTOR'S employees and agents, and to any individual not a party to this Contract, for all loss, damage, or injury caused by the CONTRACTOR, or the CONTRACTOR'S employees or agents in the course of their employment.
 - d. The CONTRACTOR shall be responsible for payment of all applicable federal, state, and county taxes and fees which may become due and owing by the CONTRACTOR by reason of this Contract, including but not limited to (i) income taxes, (ii) employment related fees, assessments, and taxes, and (iii) general excise taxes. The CONTRACTOR also is responsible for obtaining all licenses, permits, and certificates that may be required in order to perform this Contract.
 - e. The CONTRACTOR shall obtain a general excise tax license from the Department of Taxation, State of Hawaii, in accordance with section 237-9, HRS, and shall comply with all requirements thereof. The CONTRACTOR shall obtain a tax clearance certificate from the Director of Taxation, State of Hawaii, showing that all delinquent taxes, if any, levied or accrued under state law against the CONTRACTOR have been paid and submit the same to the STATE prior to commencing any performance under this Contract. The CONTRACTOR shall also be solely responsible for meeting all requirements necessary to obtain the tax clearance certificate required for final payment under sections 103-53 and 103D-328, HRS, and paragraph 17 of these General Conditions.
 - f. The CONTRACTOR is responsible for securing all employee-related insurance coverage for the CONTRACTOR and the CONTRACTOR'S employees and agents that is or may be required by law, and for payment of all premiums, costs, and other liabilities associated with securing the insurance coverage.

3. Personnel Requirements.

- a. The CONTRACTOR shall secure, at the CONTRACTOR'S own expense, all personnel required to perform this Contract.
- b. The CONTRACTOR shall ensure that the CONTRACTOR'S employees or agents are experienced and fully qualified to engage in the activities and perform the services required under this Contract, and that all applicable licensing and operating requirements imposed or required under federal, state, or county law, and all applicable accreditation and other standards of quality generally accepted in the field of the activities of such employees and agents are complied with and satisfied.

4. Nondiscrimination. No person performing work under this Contract, including any subcontractor, employee, or agent of the CONTRACTOR, shall engage in any discrimination that is prohibited by any applicable federal, state, or county law.

5. Conflicts of Interest. The CONTRACTOR represents that neither the CONTRACTOR, nor any employee or agent of the CONTRACTOR, presently has any interest, and promises that no such interest, direct or indirect, shall be acquired, that would or might conflict in any manner or degree with the CONTRACTOR'S performance under this Contract.

6. Subcontracts and Assignments. The CONTRACTOR shall not assign or subcontract any of the CONTRACTOR'S duties, obligations, or interests under this Contract and no such assignment or subcontract shall be effective unless (i) the CONTRACTOR obtains the prior written consent of the STATE and (ii) the CONTRACTOR'S assignee or subcontractor submits to the STATE a tax clearance certificate from the Director of Taxation, State of Hawaii, showing that all delinquent taxes, if any, levied or accrued under state law against the CONTRACTOR'S assignee or subcontractor have been paid. Additionally, no assignment by the CONTRACTOR of the CONTRACTOR'S right to compensation under this Contract shall be effective unless and until the assignment is approved by the Comptroller of the State of Hawaii, as provided in section 40-58, HRS.

a. Recognition of a successor in interest. When in the best interest of the State, a successor in interest may be recognized in an assignment contract in which the STATE, the CONTRACTOR and the assignee or transferee (hereinafter referred to as the "Assignee") agree that:

- (1) The Assignee assumes all of the CONTRACTOR'S obligations;
- (2) The CONTRACTOR remains liable for all obligations under this Contract but waives all rights under this Contract as against the STATE; and
- (3) The CONTRACTOR shall continue to furnish, and the Assignee shall also furnish, all required bonds.

b. Change of name. When the CONTRACTOR asks to change the name in which it holds this Contract with the STATE, the procurement officer of the purchasing agency (hereinafter referred to as the "Agency procurement officer") shall, upon receipt of a document acceptable or satisfactory to the Agency procurement officer indicating such change of name (for example, an amendment to the CONTRACTOR'S articles of incorporation), enter into an amendment to this Contract with the CONTRACTOR to effect such a change of name. The amendment to this Contract changing the CONTRACTOR'S name shall specifically indicate that no other terms and conditions of this Contract are thereby changed.

c. Reports. All assignment contracts and amendments to this Contract effecting changes of the CONTRACTOR'S name or novations hereunder shall be reported to the chief procurement officer (CPO) as defined in section 103D-203(a), HRS, within thirty days of the date that the assignment contract or amendment becomes effective.

d. Actions affecting more than one purchasing agency. Notwithstanding the provisions of subparagraphs 6a through 6c herein, when the CONTRACTOR holds contracts with more than one purchasing

agency of the State, the assignment contracts and the novation and change of name amendments herein authorized shall be processed only through the CPO's office.

7. Indemnification and Defense. The CONTRACTOR shall defend, indemnify, and hold harmless the State of Hawaii, the contracting agency, and their officers, employees, and agents from and against all liability, loss, damage, cost, and expense, including all attorneys' fees, and all claims, suits, and demands therefore, arising out of or resulting from the acts or omissions of the CONTRACTOR or the CONTRACTOR'S employees, officers, agents, or subcontractors under this Contract. The provisions of this paragraph shall remain in full force and effect notwithstanding the expiration or early termination of this Contract.
8. Cost of Litigation. In case the STATE shall, without any fault on its part, be made a party to any litigation commenced by or against the CONTRACTOR in connection with this Contract, the CONTRACTOR shall pay all costs and expenses incurred by or imposed on the STATE, including attorneys' fees.
9. Liquidated Damages. When the CONTRACTOR is given notice of delay or nonperformance as specified in paragraph 13 (Termination for Default) and fails to cure in the time specified, it is agreed the CONTRACTOR shall pay to the STATE the amount, if any, set forth in this Contract per calendar day from the date set for cure until either (i) the STATE reasonably obtains similar goods or services, or both, if the CONTRACTOR is terminated for default, or (ii) until the CONTRACTOR provides the goods or services, or both, if the CONTRACTOR is not terminated for default. To the extent that the CONTRACTOR'S delay or nonperformance is excused under paragraph 13d (Excuse for Nonperformance or Delay Performance), liquidated damages shall not be assessable against the CONTRACTOR. The CONTRACTOR remains liable for damages caused other than by delay.
10. STATE'S Right of Offset. The STATE may offset against any monies or other obligations the STATE owes to the CONTRACTOR under this Contract, any amounts owed to the State of Hawaii by the CONTRACTOR under this Contract or any other contracts, or pursuant to any law or other obligation owed to the State of Hawaii by the CONTRACTOR, including, without limitation, the payment of any taxes or levies of any kind or nature. The STATE will notify the CONTRACTOR in writing of any offset and the nature of such offset. For purposes of this paragraph, amounts owed to the State of Hawaii shall not include debts or obligations which have been liquidated, agreed to by the CONTRACTOR, and are covered by an installment payment or other settlement plan approved by the State of Hawaii, provided, however, that the CONTRACTOR shall be entitled to such exclusion only to the extent that the CONTRACTOR is current with, and not delinquent on, any payments or obligations owed to the State of Hawaii under such payment or other settlement plan.
11. Disputes. Disputes shall be resolved in accordance with section 103D-703, HRS, and chapter 3-126, Hawaii Administrative Rules ("HAR"), as the same may be amended from time to time.
12. Suspension of Contract. The STATE reserves the right at any time and for any reason to suspend this Contract for any reasonable period, upon written notice to the CONTRACTOR in accordance with the provisions herein.
 - a. Order to stop performance. The Agency procurement officer may, by written order to the CONTRACTOR, at any time, and without notice to any surety, require the CONTRACTOR to stop all or any part of the performance called for by this Contract. This order shall be for a specified period not exceeding sixty (60) days after the order is delivered to the CONTRACTOR, unless the parties agree to any further period. Any such order shall be identified specifically as a stop performance order issued pursuant to this section. Stop performance orders shall include, as appropriate: (1) A clear description of the work to be suspended; (2) Instructions as to the issuance of further orders by the CONTRACTOR for material or services; (3) Guidance as to action to be taken on subcontracts; and (4) Other instructions and suggestions to the CONTRACTOR for minimizing costs. Upon receipt of such an order, the CONTRACTOR shall forthwith comply with its terms and suspend all performance under this Contract at the time stated, provided, however, the CONTRACTOR shall take all reasonable steps to minimize the occurrence of costs allocable to the performance covered by the order during the period of performance stoppage. Before the stop performance order expires, or within any further period to which the parties shall have agreed, the Agency procurement officer shall either:
 - (1) Cancel the stop performance order; or

- (2) Terminate the performance covered by such order as provided in the termination for default provision or the termination for convenience provision of this Contract.
- b. Cancellation or expiration of the order. If a stop performance order issued under this section is cancelled at any time during the period specified in the order, or if the period of the order or any extension thereof expires, the CONTRACTOR shall have the right to resume performance. An appropriate adjustment shall be made in the delivery schedule or contract price, or both, and the Contract shall be modified in writing accordingly, if:
 - (1) The stop performance order results in an increase in the time required for, or in the CONTRACTOR'S cost properly allocable to, the performance of any part of this Contract; and
 - (2) The CONTRACTOR asserts a claim for such an adjustment within thirty (30) days after the end of the period of performance stoppage; provided that, if the Agency procurement officer decides that the facts justify such action, any such claim asserted may be received and acted upon at any time prior to final payment under this Contract.
- c. Termination of stopped performance. If a stop performance order is not cancelled and the performance covered by such order is terminated for default or convenience, the reasonable costs resulting from the stop performance order shall be allowable by adjustment or otherwise.
- d. Adjustment of price. Any adjustment in contract price made pursuant to this paragraph shall be determined in accordance with the price adjustment provision of this Contract.

13. Termination for Default.

- a. Default. If the CONTRACTOR refuses or fails to perform any of the provisions of this Contract with such diligence as will ensure its completion within the time specified in this Contract, or any extension thereof, otherwise fails to timely satisfy the Contract provisions, or commits any other substantial breach of this Contract, the Agency procurement officer may notify the CONTRACTOR in writing of the delay or non-performance and if not cured in ten (10) days or any longer time specified in writing by the Agency procurement officer, such officer may terminate the CONTRACTOR'S right to proceed with the Contract or such part of the Contract as to which there has been delay or a failure to properly perform. In the event of termination in whole or in part, the Agency procurement officer may procure similar goods or services in a manner and upon the terms deemed appropriate by the Agency procurement officer. The CONTRACTOR shall continue performance of the Contract to the extent it is not terminated and shall be liable for excess costs incurred in procuring similar goods or services.
- b. CONTRACTOR'S duties. Notwithstanding termination of the Contract and subject to any directions from the Agency procurement officer, the CONTRACTOR shall take timely, reasonable, and necessary action to protect and preserve property in the possession of the CONTRACTOR in which the STATE has an interest.
- c. Compensation. Payment for completed goods and services delivered and accepted by the STATE shall be at the price set forth in the Contract. Payment for the protection and preservation of property shall be in an amount agreed upon by the CONTRACTOR and the Agency procurement officer. If the parties fail to agree, the Agency procurement officer shall set an amount subject to the CONTRACTOR'S rights under chapter 3-126, HAR. The STATE may withhold from amounts due the CONTRACTOR such sums as the Agency procurement officer deems to be necessary to protect the STATE against loss because of outstanding liens or claims and to reimburse the STATE for the excess costs expected to be incurred by the STATE in procuring similar goods and services.
- d. Excuse for nonperformance or delayed performance. The CONTRACTOR shall not be in default by reason of any failure in performance of this Contract in accordance with its terms, including any failure by the CONTRACTOR to make progress in the prosecution of the performance hereunder which endangers such performance, if the CONTRACTOR has notified the Agency procurement

officer within fifteen (15) days after the cause of the delay and the failure arises out of causes such as: acts of God; acts of a public enemy; acts of the State and any other governmental body in its sovereign or contractual capacity; fires; floods; epidemics; quarantine restrictions; strikes or other labor disputes; freight embargoes; or unusually severe weather. If the failure to perform is caused by the failure of a subcontractor to perform or to make progress, and if such failure arises out of causes similar to those set forth above, the CONTRACTOR shall not be deemed to be in default, unless the goods and services to be furnished by the subcontractor were reasonably obtainable from other sources in sufficient time to permit the CONTRACTOR to meet the requirements of the Contract. Upon request of the CONTRACTOR, the Agency procurement officer shall ascertain the facts and extent of such failure, and, if such officer determines that any failure to perform was occasioned by any one or more of the excusable causes, and that, but for the excusable cause, the CONTRACTOR'S progress and performance would have met the terms of the Contract, the delivery schedule shall be revised accordingly, subject to the rights of the STATE under this Contract. As used in this paragraph, the term "subcontractor" means subcontractor at any tier.

- e. Erroneous termination for default. If, after notice of termination of the CONTRACTOR'S right to proceed under this paragraph, it is determined for any reason that the CONTRACTOR was not in default under this paragraph, or that the delay was excusable under the provisions of subparagraph 13d, "Excuse for nonperformance or delayed performance," the rights and obligations of the parties shall be the same as if the notice of termination had been issued pursuant to paragraph 14.
- f. Additional rights and remedies. The rights and remedies provided in this paragraph are in addition to any other rights and remedies provided by law or under this Contract.

14. Termination for Convenience.

- a. Termination. The Agency procurement officer may, when the interests of the STATE so require, terminate this Contract in whole or in part, for the convenience of the STATE. The Agency procurement officer shall give written notice of the termination to the CONTRACTOR specifying the part of the Contract terminated and when termination becomes effective.
- b. CONTRACTOR'S obligations. The CONTRACTOR shall incur no further obligations in connection with the terminated performance and on the date(s) set in the notice of termination the CONTRACTOR will stop performance to the extent specified. The CONTRACTOR shall also terminate outstanding orders and subcontracts as they relate to the terminated performance. The CONTRACTOR shall settle the liabilities and claims arising out of the termination of subcontracts and orders connected with the terminated performance subject to the STATE'S approval. The Agency procurement officer may direct the CONTRACTOR to assign the CONTRACTOR'S right, title, and interest under terminated orders or subcontracts to the STATE. The CONTRACTOR must still complete the performance not terminated by the notice of termination and may incur obligations as necessary to do so.
- c. Right to goods and work product. The Agency procurement officer may require the CONTRACTOR to transfer title and deliver to the STATE in the manner and to the extent directed by the Agency procurement officer:
 - (1) Any completed goods or work product; and
 - (2) The partially completed goods and materials, parts, tools, dies, jigs, fixtures, plans, drawings, information, and contract rights (hereinafter called "manufacturing material") as the CONTRACTOR has specifically produced or specially acquired for the performance of the terminated part of this Contract.

The CONTRACTOR shall, upon direction of the Agency procurement officer, protect and preserve property in the possession of the CONTRACTOR in which the STATE has an interest. If the Agency procurement officer does not exercise this right, the CONTRACTOR shall use best efforts to sell such goods and manufacturing materials. Use of this paragraph in no way implies that the STATE has breached the Contract by exercise of the termination for convenience provision.

d. Compensation.

- (1) The CONTRACTOR shall submit a termination claim specifying the amounts due because of the termination for convenience together with the cost or pricing data, submitted to the extent required by chapter 3-122, HAR, bearing on such claim. If the CONTRACTOR fails to file a termination claim within one year from the effective date of termination, the Agency procurement officer may pay the CONTRACTOR, if at all, an amount set in accordance with subparagraph 14d(3) below.
- (2) The Agency procurement officer and the CONTRACTOR may agree to a settlement provided the CONTRACTOR has filed a termination claim supported by cost or pricing data submitted as required and that the settlement does not exceed the total Contract price plus settlement costs reduced by payments previously made by the STATE, the proceeds of any sales of goods and manufacturing materials under subparagraph 14c, and the Contract price of the performance not terminated.
- (3) Absent complete agreement under subparagraph 14d(2) the Agency procurement officer shall pay the CONTRACTOR the following amounts, provided payments agreed to under subparagraph 14d(2) shall not duplicate payments under this subparagraph for the following:
 - (A) Contract prices for goods or services accepted under the Contract;
 - (B) Costs incurred in preparing to perform and performing the terminated portion of the performance plus a fair and reasonable profit on such portion of the performance, such profit shall not include anticipatory profit or consequential damages, less amounts paid or to be paid for accepted goods or services; provided, however, that if it appears that the CONTRACTOR would have sustained a loss if the entire Contract would have been completed, no profit shall be allowed or included and the amount of compensation shall be reduced to reflect the anticipated rate of loss;
 - (C) Costs of settling and paying claims arising out of the termination of subcontracts or orders pursuant to subparagraph 14b. These costs must not include costs paid in accordance with subparagraph 14d(3)(B);
 - (D) The reasonable settlement costs of the CONTRACTOR, including accounting, legal, clerical, and other expenses reasonably necessary for the preparation of settlement claims and supporting data with respect to the terminated portion of the Contract and for the termination of subcontracts thereunder, together with reasonable storage, transportation, and other costs incurred in connection with the protection or disposition of property allocable to the terminated portion of this Contract. The total sum to be paid the CONTRACTOR under this subparagraph shall not exceed the total Contract price plus the reasonable settlement costs of the CONTRACTOR reduced by the amount of payments otherwise made, the proceeds of any sales of supplies and manufacturing materials under subparagraph 14d(2), and the contract price of performance not terminated.
- (4) Costs claimed, agreed to, or established under subparagraphs 14d(2) and 14d(3) shall be in accordance with Chapter 3-123 (Cost Principles) of the Procurement Rules.

15. Claims Based on the Agency Procurement Officer's Actions or Omissions.

- a. Changes in scope. If any action or omission on the part of the Agency procurement officer (which term includes the designee of such officer for purposes of this paragraph 15) requiring performance changes within the scope of the Contract constitutes the basis for a claim by the CONTRACTOR for additional compensation, damages, or an extension of time for completion, the CONTRACTOR shall continue with performance of the Contract in compliance with the directions or orders of such

officials, but by so doing, the CONTRACTOR shall not be deemed to have prejudiced any claim for additional compensation, damages, or an extension of time for completion; provided:

- (1) Written notice required. The CONTRACTOR shall give written notice to the Agency procurement officer:
 - (A) Prior to the commencement of the performance involved, if at that time the CONTRACTOR knows of the occurrence of such action or omission;
 - (B) Within thirty (30) days after the CONTRACTOR knows of the occurrence of such action or omission, if the CONTRACTOR did not have such knowledge prior to the commencement of the performance; or
 - (C) Within such further time as may be allowed by the Agency procurement officer in writing.
- (2) Notice content. This notice shall state that the CONTRACTOR regards the act or omission as a reason which may entitle the CONTRACTOR to additional compensation, damages, or an extension of time. The Agency procurement officer, upon receipt of such notice, may rescind such action, remedy such omission, or take such other steps as may be deemed advisable in the discretion of the Agency procurement officer;
- (3) Basis must be explained. The notice required by subparagraph 15a(1) describes as clearly as practicable at the time the reasons why the CONTRACTOR believes that additional compensation, damages, or an extension of time may be remedies to which the CONTRACTOR is entitled; and
- (4) Claim must be justified. The CONTRACTOR must maintain and, upon request, make available to the Agency procurement officer within a reasonable time, detailed records to the extent practicable, and other documentation and evidence satisfactory to the STATE, justifying the claimed additional costs or an extension of time in connection with such changes.

- b. CONTRACTOR not excused. Nothing herein contained, however, shall excuse the CONTRACTOR from compliance with any rules or laws precluding any state officers and CONTRACTOR from acting in collusion or bad faith in issuing or performing change orders which are clearly not within the scope of the Contract.
- c. Price adjustment. Any adjustment in the price made pursuant to this paragraph shall be determined in accordance with the price adjustment provision of this Contract.

16. Costs and Expenses. Any reimbursement due the CONTRACTOR for per diem and transportation expenses under this Contract shall be subject to chapter 3-123 (Cost Principles), HAR, and the following guidelines:
 - a. Reimbursement for air transportation shall be for actual cost or coach class air fare, whichever is less.
 - b. Reimbursement for ground transportation costs shall not exceed the actual cost of renting an intermediate-sized vehicle.
 - c. Unless prior written approval of the HOPA is obtained, reimbursement for subsistence allowance (i.e., hotel and meals, etc.) shall not exceed the applicable daily authorized rates for inter-island or out-of-state travel that are set forth in the current Governor's Executive Order authorizing adjustments in salaries and benefits for state officers and employees in the executive branch who are excluded from collective bargaining coverage.

17. Payment Procedures; Final Payment; Tax Clearance.

- a. Original invoices required. All payments under this Contract shall be made only upon submission by the CONTRACTOR of original invoices specifying the amount due and certifying that services requested under the Contract have been performed by the CONTRACTOR according to the Contract.
- b. Subject to available funds. Such payments are subject to availability of funds and allotment by the Director of Finance in accordance with chapter 37, HRS. Further, all payments shall be made in accordance with and subject to chapter 40, HRS.
- c. Prompt payment.
 - (1) Any money, other than retainage, paid to the CONTRACTOR shall be disbursed to subcontractors within ten (10) days after receipt of the money in accordance with the terms of the subcontract; provided that the subcontractor has met all the terms and conditions of the subcontract and there are no bona fide disputes; and
 - (2) Upon final payment to the CONTRACTOR, full payment to the subcontractor, including retainage, shall be made within ten (10) days after receipt of the money; provided that there are no bona fide disputes over the subcontractor's performance under the subcontract.
- d. Final payment. Final payment under this Contract shall be subject to sections 103-53 and 103D-328, HRS, which require a tax clearance from the Director of Taxation, State of Hawaii, showing that all delinquent taxes, if any, levied or accrued under state law against the CONTRACTOR have been paid.

18. Federal Funds. If this Contract is payable in whole or in part from federal funds, CONTRACTOR agrees that, as to the portion of the compensation under this Contract to be payable from federal funds, the CONTRACTOR shall be paid only from such funds received from the federal government, and shall not be paid from any other funds. Failure of the STATE to receive anticipated federal funds shall not be considered a breach by the STATE or an excuse for nonperformance by the CONTRACTOR.

19. Modifications of Contract.

- a. In writing. Any modification, alteration, amendment, change, or extension of any term, provision, or condition of this Contract permitted by this Contract shall be made by written amendment to this Contract, signed by the CONTRACTOR and the STATE, provided that change orders shall be made in accordance with paragraph 20 herein.
- b. No oral modification. No oral modification, alteration, amendment, change, or extension of any term, provision, or condition of this Contract shall be permitted.
- c. Agency procurement officer. By written order, at any time, and without notice to any surety, the Agency procurement officer may unilaterally order of the CONTRACTOR:
 - (A) Changes in the work within the scope of the Contract; and
 - (B) Changes in the time of performance of the Contract that do not alter the scope of the Contract work.
- d. Adjustments of price or time for performance. If any modification increases or decreases the CONTRACTOR'S cost of, or the time required for, performance of any part of the work under this Contract, an adjustment shall be made and this Contract modified in writing accordingly. Any adjustment in contract price made pursuant to this clause shall be determined, where applicable, in accordance with the price adjustment clause of this Contract or as negotiated.

- e. Claim barred after final payment. No claim by the CONTRACTOR for an adjustment hereunder shall be allowed if written modification of the Contract is not made prior to final payment under this Contract.
 - f. Claims not barred. In the absence of a written contract modification, nothing in this clause shall be deemed to restrict the CONTRACTOR'S right to pursue a claim under this Contract or for a breach of contract.
 - g. CPO approval. If this is a professional services contract awarded pursuant to section 103D-303 or 103D-304, HRS, any modification, alteration, amendment, change, or extension of any term, provision, or condition of this Contract which increases the amount payable to the CONTRACTOR by at least \$25,000.00 or ten per cent (10%) of the initial contract price, whichever increase is higher, must receive the prior approval of the CPO.
 - h. Tax clearance. The STATE may, at its discretion, require the CONTRACTOR to submit to the STATE, prior to the STATE'S approval of any modification, alteration, amendment, change, or extension of any term, provision, or condition of this Contract, a tax clearance from the Director of Taxation, State of Hawaii, showing that all delinquent taxes, if any, levied or accrued under state law against the CONTRACTOR have been paid.
 - i. Sole source contracts. Amendments to sole source contracts that would change the original scope of the Contract may only be made with the approval of the CPO. Annual renewal of a sole source contract for services should not be submitted as an amendment.
20. Change Order. The Agency procurement officer may, by a written order signed only by the STATE, at any time, and without notice to any surety, and subject to all appropriate adjustments, make changes within the general scope of this Contract in any one or more of the following:
- (1) Drawings, designs, or specifications, if the goods or services to be furnished are to be specially provided to the STATE in accordance therewith;
 - (2) Method of delivery; or
 - (3) Place of delivery.
- a. Adjustments of price or time for performance. If any change order increases or decreases the CONTRACTOR'S cost of, or the time required for, performance of any part of the work under this Contract, whether or not changed by the order, an adjustment shall be made and the Contract modified in writing accordingly. Any adjustment in the Contract price made pursuant to this provision shall be determined in accordance with the price adjustment provision of this Contract. Failure of the parties to agree to an adjustment shall not excuse the CONTRACTOR from proceeding with the Contract as changed, provided that the Agency procurement officer promptly and duly makes the provisional adjustments in payment or time for performance as may be reasonable. By proceeding with the work, the CONTRACTOR shall not be deemed to have prejudiced any claim for additional compensation, or any extension of time for completion.
 - b. Time period for claim. Within ten (10) days after receipt of a written change order under subparagraph 20a, unless the period is extended by the Agency procurement officer in writing, the CONTRACTOR shall respond with a claim for an adjustment. The requirement for a timely written response by CONTRACTOR cannot be waived and shall be a condition precedent to the assertion of a claim.
 - c. Claim barred after final payment. No claim by the CONTRACTOR for an adjustment hereunder shall be allowed if a written response is not given prior to final payment under this Contract.
 - d. Other claims not barred. In the absence of a change order, nothing in this paragraph 20 shall be deemed to restrict the CONTRACTOR'S right to pursue a claim under the Contract or for breach of contract.

21. Price Adjustment.

- a. Price adjustment. Any adjustment in the contract price pursuant to a provision in this Contract shall be made in one or more of the following ways:
- (1) By agreement on a fixed price adjustment before commencement of the pertinent performance or as soon thereafter as practicable;
 - (2) By unit prices specified in the Contract or subsequently agreed upon;
 - (3) By the costs attributable to the event or situation covered by the provision, plus appropriate profit or fee, all as specified in the Contract or subsequently agreed upon;
 - (4) In such other manner as the parties may mutually agree; or
 - (5) In the absence of agreement between the parties, by a unilateral determination by the Agency procurement officer of the costs attributable to the event or situation covered by the provision, plus appropriate profit or fee, all as computed by the Agency procurement officer in accordance with generally accepted accounting principles and applicable sections of chapters 3-123 and 3-126, HAR.
- b. Submission of cost or pricing data. The CONTRACTOR shall provide cost or pricing data for any price adjustments subject to the provisions of chapter 3-122, HAR.

22. Variation in Quantity for Definite Quantity Contracts. Upon the agreement of the STATE and the CONTRACTOR, the quantity of goods or services, or both, if a definite quantity is specified in this Contract, may be increased by a maximum of ten per cent (10%); provided the unit prices will remain the same except for any price adjustments otherwise applicable; and the Agency procurement officer makes a written determination that such an increase will either be more economical than awarding another contract or that it would not be practical to award another contract.

23. Changes in Cost-Reimbursement Contract. If this Contract is a cost-reimbursement contract, the following provisions shall apply:

- a. The Agency procurement officer may at any time by written order, and without notice to the sureties, if any, make changes within the general scope of the Contract in any one or more of the following:
- (1) Description of performance (Attachment 1);
 - (2) Time of performance (i.e., hours of the day, days of the week, etc.);
 - (3) Place of performance of services;
 - (4) Drawings, designs, or specifications when the supplies to be furnished are to be specially manufactured for the STATE in accordance with the drawings, designs, or specifications;
 - (5) Method of shipment or packing of supplies; or
 - (6) Place of delivery.
- b. If any change causes an increase or decrease in the estimated cost of, or the time required for performance of, any part of the performance under this Contract, whether or not changed by the order, or otherwise affects any other terms and conditions of this Contract, the Agency procurement officer shall make an equitable adjustment in the (1) estimated cost, delivery or completion schedule, or both; (2) amount of any fixed fee; and (3) other affected terms and shall modify the Contract accordingly.

- c. The CONTRACTOR must assert the CONTRACTOR'S rights to an adjustment under this provision within thirty (30) days from the day of receipt of the written order. However, if the Agency procurement officer decides that the facts justify it, the Agency procurement officer may receive and act upon a proposal submitted before final payment under the Contract.
- d. Failure to agree to any adjustment shall be a dispute under paragraph 11 of this Contract. However, nothing in this provision shall excuse the CONTRACTOR from proceeding with the Contract as changed.
- e. Notwithstanding the terms and conditions of subparagraphs 23a and 23b, the estimated cost of this Contract and, if this Contract is incrementally funded, the funds allotted for the performance of this Contract, shall not be increased or considered to be increased except by specific written modification of the Contract indicating the new contract estimated cost and, if this contract is incrementally funded, the new amount allotted to the contract.

24. Confidentiality of Material.

- a. All material given to or made available to the CONTRACTOR by virtue of this Contract, which is identified as proprietary or confidential information, will be safeguarded by the CONTRACTOR and shall not be disclosed to any individual or organization without the prior written approval of the STATE.
- b. All information, data, or other material provided by the CONTRACTOR to the STATE shall be subject to the Uniform Information Practices Act, chapter 92F, HRS.

25. Publicity. The CONTRACTOR shall not refer to the STATE, or any office, agency, or officer thereof, or any state employee, including the HOPA, the CPO, the Agency procurement officer, or to the services or goods, or both, provided under this Contract, in any of the CONTRACTOR'S brochures, advertisements, or other publicity of the CONTRACTOR. All media contacts with the CONTRACTOR about the subject matter of this Contract shall be referred to the Agency procurement officer.

26. Ownership Rights and Copyright. The STATE shall have complete ownership of all material, both finished and unfinished, which is developed, prepared, assembled, or conceived by the CONTRACTOR pursuant to this Contract, and all such material shall be considered "works made for hire." All such material shall be delivered to the STATE upon expiration or termination of this Contract. The STATE, in its sole discretion, shall have the exclusive right to copyright any product, concept, or material developed, prepared, assembled, or conceived by the CONTRACTOR pursuant to this Contract.

27. Liens and Warranties. Goods provided under this Contract shall be provided free of all liens and provided together with all applicable warranties, or with the warranties described in the Contract documents, whichever are greater.

28. Audit of Books and Records of the CONTRACTOR. The STATE may, at reasonable times and places, audit the books and records of the CONTRACTOR, prospective contractor, subcontractor, or prospective subcontractor which are related to:

- a. The cost or pricing data, and
- b. A state contract, including subcontracts, other than a firm fixed-price contract.

29. Cost or Pricing Data. Cost or pricing data must be submitted to the Agency procurement officer and timely certified as accurate for contracts over \$100,000 unless the contract is for a multiple-term or as otherwise specified by the Agency procurement officer. Unless otherwise required by the Agency procurement officer, cost or pricing data submission is not required for contracts awarded pursuant to competitive sealed bid procedures.

If certified cost or pricing data are subsequently found to have been inaccurate, incomplete, or noncurrent as of the date stated in the certificate, the STATE is entitled to an adjustment of the contract price, including profit

or fee, to exclude any significant sum by which the price, including profit or fee, was increased because of the defective data. It is presumed that overstated cost or pricing data increased the contract price in the amount of the defect plus related overhead and profit or fee. Therefore, unless there is a clear indication that the defective data was not used or relied upon, the price will be reduced in such amount.

30. Audit of Cost or Pricing Data. When cost or pricing principles are applicable, the STATE may require an audit of cost or pricing data.
31. Records Retention. The CONTRACTOR and any subcontractors shall maintain the books and records that relate to the Contract and any cost or pricing data for three (3) years from the date of final payment under the Contract.
32. Antitrust Claims. The STATE and the CONTRACTOR recognize that in actual economic practice, overcharges resulting from antitrust violations are in fact usually borne by the purchaser. Therefore, the CONTRACTOR hereby assigns to STATE any and all claims for overcharges as to goods and materials purchased in connection with this Contract, except as to overcharges which result from violations commencing after the price is established under this Contract and which are not passed on to the STATE under an escalation clause.
33. Patented Articles. The CONTRACTOR shall defend, indemnify, and hold harmless the STATE, and its officers, employees, and agents from and against all liability, loss, damage, cost, and expense, including all attorneys fees, and all claims, suits, and demands arising out of or resulting from any claims, demands, or actions by the patent holder for infringement or other improper or unauthorized use of any patented article, patented process, or patented appliance in connection with this Contract. The CONTRACTOR shall be solely responsible for correcting or curing to the satisfaction of the STATE any such infringement or improper or unauthorized use, including, without limitation: (a) furnishing at no cost to the STATE a substitute article, process, or appliance acceptable to the STATE, (b) paying royalties or other required payments to the patent holder, (c) obtaining proper authorizations or releases from the patent holder, and (d) furnishing such security to or making such arrangements with the patent holder as may be necessary to correct or cure any such infringement or improper or unauthorized use.
34. Governing Law. The validity of this Contract and any of its terms or provisions, as well as the rights and duties of the parties to this Contract, shall be governed by the laws of the State of Hawaii. Any action at law or in equity to enforce or interpret the provisions of this Contract shall be brought in a state court of competent jurisdiction in Honolulu, Hawaii.
35. Compliance with Laws. The CONTRACTOR shall comply with all federal, state, and county laws, ordinances, codes, rules, and regulations, as the same may be amended from time to time, that in any way affect the CONTRACTOR'S performance of this Contract.
36. Conflict Between General Conditions and Procurement Rules. In the event of a conflict between the General Conditions and the procurement rules, the procurement rules in effect on the date this Contract became effective shall control and are hereby incorporated by reference.
37. Entire Contract. This Contract sets forth all of the agreements, conditions, understandings, promises, warranties, and representations between the STATE and the CONTRACTOR relative to this Contract. This Contract supersedes all prior agreements, conditions, understandings, promises, warranties, and representations, which shall have no further force or effect. There are no agreements, conditions, understandings, promises, warranties, or representations, oral or written, express or implied, between the STATE and the CONTRACTOR other than as set forth or as referred to herein.
38. Severability. In the event that any provision of this Contract is declared invalid or unenforceable by a court, such invalidity or unenforceability shall not affect the validity or enforceability of the remaining terms of this Contract.
39. Waiver. The failure of the STATE to insist upon the strict compliance with any term, provision, or condition of this Contract shall not constitute or be deemed to constitute a waiver or relinquishment of the STATE'S right to enforce the same in accordance with this Contract. The fact that the STATE specifically refers to one

provision of the procurement rules or one section of the Hawaii Revised Statutes, and does not include other provisions or statutory sections in this Contract shall not constitute a waiver or relinquishment of the STATE'S rights or the CONTRACTOR'S obligations under the procurement rules or statutes.

40. Pollution Control. If during the performance of this Contract, the CONTRACTOR encounters a "release" or a "threatened release" of a reportable quantity of a "hazardous substance," "pollutant," or "contaminant" as those terms are defined in section 128D-1, HRS, the CONTRACTOR shall immediately notify the STATE and all other appropriate state, county, or federal agencies as required by law. The Contractor shall take all necessary actions, including stopping work, to avoid causing, contributing to, or making worse a release of a hazardous substance, pollutant, or contaminant, and shall promptly obey any orders the Environmental Protection Agency or the state Department of Health issues in response to the release. In the event there is an ensuing cease-work period, and the STATE determines that this Contract requires an adjustment of the time for performance, the Contract shall be modified in writing accordingly.
41. Campaign Contributions. The CONTRACTOR is hereby notified of the applicability of 11-205.5, HRS, which states that campaign contributions are prohibited from specified state or county government contractors during the terms of their contracts if the contractors are paid with funds appropriated by a legislative body.